

# **Five-Year Review Report**

## **Third Five-Year Review Report for the Agriculture Street Landfill Superfund Site New Orleans, Orleans Parish, Louisiana**



**PREPARED BY:**

**Region 6  
United States Environmental Protection Agency  
Dallas, Texas**

**September 2013**

[This page intentionally left blank.]

## CONCURRENCES

FIVE-YEAR REVIEW  
Agriculture Street Landfill Superfund Site  
EPA ID# LAD981056997


Document Prepared By: The U.S. Environmental Protection Agency

Concur By:  
EPA Region 6  
Remedial Project Manager:

  
Ursula Lennox (6SF-RL)

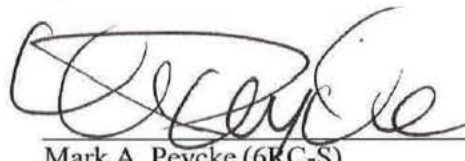
9/14/13  
Date

Concur By:  
EPA Region 6  
Site Attorney:

  
Joseph Compton, III (6RC-S)

9/24/13  
Date

Concur By:  
EPA Region 6  
Superfund Branch Chief, Office  
of the Regional Counsel:

  
Mark A. Peycke (6RC-S)


09/24/13  
Date

Concur By:  
EPA Region 6  
LA/OK/NM Section Chief:

  
Cathy Gilmore (6SF-RL)

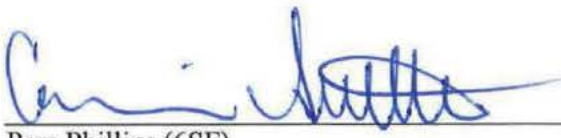
9/16/13  
Date

Concur By:  
EPA Region 6  
Remedial Branch,  
Associate Director:

  
Charles Faultry (6SF-R)

9/24/13  
Date

Concur By:  
EPA Region 6  
Deputy Director, Superfund  
Division:

  
Pam Phillips (6SF)

9/26/13  
Date

[This page intentionally left blank.]



## Contents

Section	Page
Contents.....	i
Acronyms.....	iii
Executive Summary.....	v
Five Year Review Summary Form.....	ix
<b>Third Five-Year Review Report.....</b>	<b>1</b>
1.0 Introduction.....	1
2.0 Site Chronology.....	3
3.0 Background.....	3
3.1 Physical Characteristics.....	3
3.1.1 Geology.....	3
3.1.2 Hydrogeology.....	4
3.2 Land and Resource Use.....	4
3.3 History of Contamination.....	6
3.4 Initial Response.....	7
3.5 Basis for Taking Action.....	10
4.0 Remedial Actions.....	10
4.1 Remedial Objectives.....	10
4.2 Remedy Selection.....	10
4.3 Remedy Implementation.....	11
4.4 Operations and Maintenance.....	11
4.5 Progress Since Initiation of Removal Actions.....	12
5.0 Progress since the Second Five-Year Review.....	12
5.1 Recovery Progress since Hurricanes Katrina, Rita, and Isaac.....	12
5.2 Consent Decree between EPA and the City of New Orleans.....	14
5.3 Protectiveness Statements from Second Five-Year Review.....	16
5.4 Second Five-Year Review Recommendations and Follow-up Actions.....	16
5.5 Status of Recommended Actions.....	17
6.0 Five-Year Review Process.....	17
6.1 Administrative Components.....	17
6.2 Community Involvement.....	17
6.3 Document Review.....	18
6.4 Data Review.....	18

6.5	Interviews.....	18
6.6	Site Inspections.....	19
7.0	Technical Assessment.....	20
7.1	Question A: Is the Remedy Functioning as Intended by the Decision Documents?...	20
7.2	Question B: Are the Exposure Assumptions, Toxicity Data, Cleanup Levels, and Remedial Action Objectives Used at the Time of the Remedy Selection Still Valid?..	20
7.3	Question C: Has any Other Information Come to Light that Could Call into Question the Protectiveness of the Remedy?.....	22
7.4	Summary of the Technical Assessment.....	22
8.0	Institutional Controls.....	23
8.1	Types of Institutional Controls in Place at the Site.....	23
8.2	Effect of Future Land Use Plans on Institutional Controls.....	24
8.3	Plans for Changes to Site Contaminations Status.....	24
9.0	Issues.....	24
10.0	Recommendations and Follow-up Actions.....	24
11.0	Protectiveness Statement.....	24
12.0	Next Review.....	24

#### List of Tables

Table 1	Chronology of Site Events
Table 2	Actions Taken Since Last Five-Year Review

#### List of Figures

Figure 1	Agriculture Street Landfill Site Map
----------	--------------------------------------

#### List of Attachments

Attachment 1	Documents Reviewed
Attachment 2	Interview Record Forms
Attachment 3	Site Inspection Checklist
Attachment 4	Site Inspection Photographs
Attachment 5	Notice to the Public Regarding the Five-Year Review
Attachment 6	Excavation Instructions for Service Providers and Property Owners
Attachment 7	Consent Decree
Attachment 8	City Ordinance

## Acronyms

ARARs	Applicable or Relevant and Appropriate Requirements
bgs	below ground surface
CD	Consent Decree
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
COPC	Contaminants of Potential Concern
Corps	United States Army Corps of Engineers
cPAH	carcinogenic Polynuclear Aromatic Hydrocarbons
EE/CA	Engineering Evaluation/Cost Analysis
EPA	United States Environmental Protection Agency
FEMA	Federal Emergency Management Agency
gpd	gallons per day
HANO	Housing Authority of New Orleans
IRIS	Integrated Risk Information System
LDEQ	Louisiana Department of Environmental Quality
MCL	Maximum Contaminant Level
M.C.S.	Mayor Council Series
NCP	National Contingency Plan
NPL	National Priority List
mg/kg	milligrams per kilogram
msl	mean sea level
NCP	National Oil and Hazardous Substances Pollution Contingency Plan
NPL	National Priorities List
O&M	Operations and Maintenance
OU	Operable Unit
ppm	parts per million
PAH	Polynuclear Aromatic Hydrocarbons
ppt	parts per trillion
RECAP	Risk Evaluation/Corrective Action Program
RfD	Reference Dose
ROD	Record of Decision
RRII	Remedial/Removal Integrated Investigation
SARA	Superfund Amendments and Reauthorization Act
ug/kg	microgram per kilogram

[This page intentionally left blank.]

## Executive Summary

The third five-year review of the Agriculture Street Landfill (ASL) Superfund Site located in Orleans Parish, New Orleans, Louisiana, was completed in August 2013. This site is on the National Priorities List (NPL) and is a removal-only site, where, a protective cover was placed over subsurface soils containing hazardous substances, pollutants, or contaminants onsite above levels that would allow for unlimited use and unrestricted exposure. In the Environmental Protection Agency's (EPA's) continuing effort to protect human health and the environment, EPA has performed this third five-year review to ensure continued protectiveness of the removal actions completed on the site in June 2000 and April 2002. The results of this review confirmed the removal actions continue to be effective and are protective of human health and the environment. The removal and follow-up actions performed are functioning as planned and maintenance is occurring in a sufficient manner to protect the permeable soil cover that covers the remaining contaminants that exist in the subsurface soils. No deficiencies were noted that impact the protectiveness of the removal actions, however, there are two pending plans that are being developed by the Federal Emergency Management Agency (FEMA) in tandem with the Housing Authority of New Orleans (HANO), and the U.S. Army Corps of Engineers that will require coordination with EPA to ensure the continued protectiveness of the removal actions. Specifically, the Housing Authority of New Orleans (HANO) is developing plans to demolish the Press Park townhomes and apartments, and the Shirley Jefferson Community Center. The U.S. Army Corps of Engineers is developing plans to use a portion of the undeveloped property (OU1) for Phase IV of the Southeast Louisiana Urban Flood Control Project. Both entities have been in communication with EPA, the City of New Orleans, and the Louisiana Department of Environmental Quality (LDEQ).

With the recent development of dioxin levels being lowered, EPA reassessed the sample levels collected at the site and at background locations to confirm human health is still protected. The assessment determined that the results from samples collected at the site and at background locations during the site investigation are below the new values. This assessment also confirmed the continued protection of human health.

The ASL site consists of approximately 95 acres in the eastern area of New Orleans. The site was used as a municipal landfill for the City of New Orleans from about 1909 until the landfill was closed in the late 1950s. The landfill was reopened in 1965 for approximately one year as a burning and disposal area for debris created by Hurricane Betsy. From the 1970s through the late 1980s, approximately 47 acres of the site were developed for private and public uses; these areas currently support single-family homes, multiple-family dwellings, retail businesses, an elementary school, a community center, a recreation center and an electrical substation. The remainder of the site, approximately 48 acres, remained undeveloped and heavily vegetated (EPA, 2003).

As noted above, remedial actions performed at the site are functioning as designed. Following Hurricanes Katrina and Rita, EPA reviewed the status of the remedy and determined the remedy was not affected.

The time-critical and non-time critical removal actions performed at the site are considered protective of human health and the environment because contaminated soil has been removed or contained and is protected from erosion, and a barrier has been constructed to prevent exposure to the remaining impacted soil. The soil barrier covering the site is in place and expected to remain in place over time, restricting exposure to the remaining subsurface contamination. A Consent Decree between the EPA and the City of New Orleans was signed on May 28, 2008. Despite the challenges that were created by Hurricanes Katrina, Rita, and Isaac, the city is complying with the terms of the Decree and is addressing the issues captured in the second five-year Review, including those listed in this report. The completed response actions at the ASL site continue to prevent exposure to remaining site contamination in subsurface soil, and the remedy is protective of human health and the environment. With the measures described in the Consent Decree being accomplished by the city of New Orleans, and the findings from this review, EPA will resume efforts to delete the site from the National Priorities List.

### **Protectiveness Statement**

The time-critical and non-time critical removal actions performed at the site are protective of human health and the environment because contaminated soil was removed or contained and is protected from erosion, and a barrier has been constructed to prevent exposure to any remaining impacted soil. The soil barrier that covers the entire site is in place and expected to remain in place over time, restricting exposure to the remaining subsurface contaminants. A Consent Decree (Civil Action No. 02-3618, Section "E", Magistrate 2) between the EPA and the City of New Orleans was lodged May 28, 2006, and the issues and recommendations identified in the Second Five-Year Review Report are being addressed. Because the completed response actions for the ASL site prevent exposure to remaining site contamination, the remedy is considered protective of human health and the environment in the short-term, and will continue to be protective if the recommendations and follow-up actions identified in the five-year review are addressed.

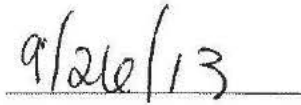


**Determinations**

I have determined that the actions performed for the Agriculture Street Landfill Superfund Site are protective of human health and the environment, and will remain so provided the action items identified in the Third Five-Year Review Report are addressed as described above.



Carl Edlund, P.E.  
Director Superfund Division  
U.S. Environmental Protection Agency, Region 6



Date

[This page intentionally left blank.]



Five-Year Review Summary Form		
SITE IDENTIFICATION		
Site name (from WasteLAN): Agriculture Street Landfill Superfund Site		
EPA ID (from WasteLAN): LAD981056997		
Region: EPA Region 6	State: Louisiana	City/County: New Orleans/Orleans Parish
SITE STATUS		
NPL Status: <input checked="" type="checkbox"/> Final <input type="checkbox"/> Deleted <input type="checkbox"/> Other (specify):		
Remediation status (choose all that apply): <input type="checkbox"/> Under Construction <input checked="" type="checkbox"/> Operating <input type="checkbox"/> Complete		
Multiple OUs? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Construction completion date: 2002	
Has site been put into reuse? <input checked="" type="checkbox"/> Yes (partially) <input type="checkbox"/> No		
REVIEW STATUS		
Reviewing agency: <input checked="" type="checkbox"/> EPA <input type="checkbox"/> State <input type="checkbox"/> Tribe <input type="checkbox"/> Other Federal Agency:		
Author: EPA Region 6		
Review period: September 2003 through March 2013		
Date(s) of site inspection: January 28, 2013		
Type of review: <input type="checkbox"/> Statutory <input checked="" type="checkbox"/> Policy <input type="checkbox"/> Post-SARA <input type="checkbox"/> Non-NPL Remedial Action site <input type="checkbox"/> Regional Discretion <input type="checkbox"/> Pre-SARA <input checked="" type="checkbox"/> NPL-Removal only <input type="checkbox"/> NPL State/Tribe-lead		
Review number: <input type="checkbox"/> 1 (first) <input type="checkbox"/> 2 (second) <input checked="" type="checkbox"/> 3 (third) <input type="checkbox"/> Other (specify):		
Triggering action: <input type="checkbox"/> Actual RA Onsite Construction <input type="checkbox"/> Actual RA Start <input type="checkbox"/> Construction Completion <input checked="" type="checkbox"/> Previous Five-Year Review Report <input type="checkbox"/> Other: Commitment to Community		
Triggering action date: April 25, 2008 (Date Second Five Year Review signed)		
Due date (five years after triggering action date): April 2013		
Issues: Based on the data review, site inspection, interviews, and technical assessment, all findings confirm the remedy has been implemented as planned and is functioning as intended by the decision documents. No issues have been identified during this Five Year Review.		

**Recommendations and Follow-Up Actions:** None.

**Protectiveness Statement(s):** The time-critical and non-time critical removal actions performed at the site are protective of human health and the environment because contaminated soil was removed or contained and is protected from erosion, and a barrier has been constructed to prevent exposure to any remaining impacted soil. The soil barrier that covers the entire site is in place and expected to remain in place over time, restricting exposure to the remaining subsurface contaminants. A Consent Decree (Civil Action No. 02-3618, Section "E", Magistrate 2) between the EPA and the City of New Orleans was lodged May 28, 2006, and the issues and recommendations identified in the Second Five-Year Review Report are being addressed

**Other Comments:** With the measures described in the Consent Decree being accomplished by the city of New Orleans, and the findings from this review, EPA will resume efforts to delete the site from the National Priorities List. . Because the completed response actions for the ASL site prevent exposure to remaining site contamination, the remedy is protective in the short term but restrictive covenants still need to be formalized.

[This page intentionally left blank.]

[This page intentionally left blank.]

# **Third Five-Year Review Report Agriculture Street Landfill Superfund Site**

The United States Environmental Protection Agency (EPA) Region 6 has conducted a third five-year review of the removal actions implemented at the Agriculture Street Landfill (ASL) Superfund Site during the period of April 2008 through March 2013. The site is located within the city limits of New Orleans, Orleans Parish, Louisiana, approximately three miles south of Lake Pontchartrain and 3 miles north-northeast of the city's central business district. The purpose of a five-year review is to determine whether the response action taken at a site is protective of human health and the environment, and to document the methods, findings, and conclusions of the five-year review in a Five-Year Review Report. This Third Five-Year Review Report documents the results of the review for the ASL site performed in accordance with EPA guidance on five-year reviews.

EPA guidance on conducting five-year reviews is provided by OSWER Directive 9355.7-03B-P, *Comprehensive Five-Year Review Guidance* (EPA, 2001) (replaces and supersedes all previous guidance on conducting five-year reviews). EPA personnel followed the guidance provided in this OSWER directive in conducting the five-year review performed for the ASL site.

## **1.0 Introduction**

Five-year reviews are conducted either to meet the statutory mandate under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Section 121, or as a matter of EPA policy. The statutory requirement to conduct five-year reviews was added to CERCLA as part of the Superfund Amendments and Reauthorization Act of 1986 (SARA). The EPA further addressed this requirement in the National Contingency Plan (NCP). EPA may also conduct five-year reviews as a matter of policy for sites not addressed specifically by the statutory requirement. EPA therefore classifies each five-year review as either "statutory" or "policy" depending on whether it is being required by statute or is being conducted as a matter of policy. CERCLA § 121I, as amended by SARA, states:

If the President selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the site, the President shall review such remedial action no less often than each five years after the initiation of such remedial action to assure that human health and the environment are being protected by the remedial action being implemented.

The NCP states:

If a remedial action is selected that results in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure, the lead agency shall review such action no less often than every five years after the initiation of the selected remedial action [40 CFR §300.430(f)(4)(ii)].

The statutory requirement to conduct a five-year review applies to CERCLA Section 121 remedial actions selected after the effective date of SARA (October 17, 1986). For sites where a statutory review is not specifically required, reviews may be conducted as a matter of policy for any of the following types of actions:

1. A pre-or post-SARA remedial action that will not leave hazardous substances, pollutants, or contaminants above levels that allow for unlimited use or unrestricted exposure, but will take longer than five years to complete.
2. A pre-SARA remedial action that leaves hazardous substances, pollutants, or contaminants, above levels that allow for unlimited use or unrestricted exposure.
3. A removal action for a site on the National Priorities Lists (NPL) that will leave hazardous substances, pollutants, or contaminants above levels that allow for unlimited use or unrestricted exposure, and where no remedial action has or will take place.

This last type of action described above (item 3) corresponds to the remedy specified for the ASL site; therefore this five-year review is being conducted as a matter of policy. The Record of Decision (ROD) for the site signed in April 2002 specifies that at least one five-year review be conducted for this site. EPA has performed this third five-year review to ensure the continued protectiveness of the removal actions performed at the site.

A Notice of Intent to Delete the site from the NPL was published on August 4, 2004, and the comment period was extended on the proposed site deletion on September 16, 2004. The extended comment period concluded on October 25, 2004. The completion of the deletion process was then suspended until additional Institutional Controls (ICs) could be established. A Consent Decree between the EPA and the City of New Orleans was lodged May 28, 2008, that contained provisions for ICs. Despite the challenges that were created by Hurricanes Katrina, Rita, and Isaac, the city is complying with the terms of the Decree and is addressing the issues captured in the second five-Year Review, including those listed in this report. The EPA and the City of New Orleans have agreed to terms on a Consent Decree to address maintenance issues at the ASL site and implement additional Institutional Controls. The Consent Decree has been signed by both the EPA and the City of New Orleans, but it has not yet been lodged in the District Court. In order to implement additional ICs at the ASL site the City of New Orleans will be required to

implement the work described in the Consent Decree. At the completion of the Third Five-Year Review, EPA will resume and complete the deletion process for the site.

## 2.0 Site Chronology

A chronology of significant site-related events and dates is included in [Table 1](#), provided at the end of the report text. Sources of this information are listed in [Attachment 1, Documents Reviewed](#).

## 3.0 Background

This section describes the physical setting of the site, including a description of the land use, resource use, and environmental setting. This section also describes the history of contamination associated with the site, the initial response actions taken at the site, and the basis for each of the initial response actions. Remedial actions performed subsequent to the initial response actions at the site are described in [Section 4](#).

### 3.1 Physical Characteristics

The ASL site is located in the eastern section of the city of New Orleans, Orleans Parish, Louisiana. The approximate geographic coordinates for the center of the former landfill are 29° 59' 20" north latitude and 90° 02' 31" west longitude. The site consists of approximately 95 acres. As shown on [Figure 1](#), the site is bounded on the north by Higgins Boulevard, on the northwest by Almonaster Blvd., and on the south and west by the Southern Railroad rights-of-way. The eastern site boundary extends from the cul-de-sac at the southern end of Clouet Street (at the southeast corner of the site, near the railroad tracks) north to Higgins Boulevard between Press and Montegut Streets ([EPA, 2002](#)).

Currently, the site is partially developed (see [Figure 1](#)). From the 1970s through the late 1980s, approximately 47 acres of the site were developed for private and public uses and currently support single-family homes, multiple-family dwellings, retail businesses, an elementary school, a community center, a recreation center and an electrical substation. The remainder of the site, approximately 48 acres, remains undeveloped and heavily vegetated ([EPA, 2003](#)).

#### 3.1.1 Geology

The ASL site lies within the Pontchartrain Basin in the Mississippi River Deltaic Plain. The shallow subsurface geology (less than or equal to 100 feet below ground surface [bgs]) in the site area is a mixture of fine-grained materials, including peat, which is typical of a marsh/swamp depositional environment. Surficial soils usually are clayey silts or sandy silts. Below the surficial units a gray clay or organic clay containing roots and other plant matter is encountered. A discontinuous peat layer may be encountered within this clay. The peat layer has been reported to be 5 to 10 feet thick in some areas of the site. A sequence of silty clays and sandy clays with interspersed silt and sand lenses is encountered beneath the clay/peat unit. A fine-grained sand has been encountered below a depth of 50 feet. Based on available

data, this sand unit is more than 50 feet thick and is assumed to be part of the Pine Island Beach Trend (EPA, 2003).

Near-shore gulf deposits and late Pleistocene-age Prairie Formation sediments underlie the Pine Island Trend and overlie the sedimentary sequence that comprises the New Orleans aquifer system. This aquifer system reportedly extends to a depth of approximately 850 feet bgs in the vicinity of the site. The late Pleistocene-age Prairie Formation consists of firm to stiff sandy and silty clays (EPA, 2003).

### 3.1.2 Hydrogeology

Below the site is found a shallow hydrogeologic unit that includes all water-bearing units above the Prairie Formation, and a deep hydrogeologic unit that includes the four aquifers that comprise the New Orleans aquifer system.

Shallow water-producing deposits (less than a depth of approximately 150 feet bgs) fall into two categories at the site: (1) small isolated near-surface sands that represent buried beaches and other locally deposited sands; and (2) point bar and tributary channel sands deposited by the Mississippi River and its tributaries. Locally, the small isolated near surface sands are not known to contain potable water nor are they extensive enough to supply large quantities of even poor quality water (EPA, 2003).

The deeper hydrogeology of the New Orleans area is characterized by a complex series of alternating beds of sand and clay that comprise the New Orleans aquifer system. The New Orleans aquifer system is normally defined as a series of four sand units from land surface to the base of the “1,200 Foot” aquifer (EPA, 2003). The four major aquifers in this succession, in descending order, are the Gramercy, Norco, Gonzales-New Orleans, and “1,200-Foot” aquifers. The Gonzales-New Orleans aquifer is the only aquifer containing significant quantities of fresh water beneath New Orleans. Because of its areal distribution, thickness, and the availability of fresh water content, it is the only practical choice for consideration as a public supply source (EPA, 2003).

Aquifers of the New Orleans aquifer system are recharged directly by precipitation, by percolation downward through the overlying surficial sediments, and by recharge from the Mississippi River. Recharge from precipitation is sufficient to maintain relatively constant long-term water levels in the aquifers at the outcrop areas. Observations of water levels in shallow wells near the outcrop areas indicate that long-term water levels are not affected by ground water pumping (EPA, 2003).

## 3.2 Land and Resource Use

The historic use of the site was as a municipal landfill for the City of New Orleans. Landfill activities began in approximately 1909 and continued until the landfill was closed in the late 1950s. The landfill was reopened in 1965 for approximately one year for use as a burning and disposal area for debris created by Hurricane Betsy. Current land uses and resource uses (including surface water and ground water) are



described in the following paragraphs.

The approximately 95-acre ASL site includes 47 acres that were developed from the 1970s through the late 1980s and supported single-family homes, multiple-family dwellings, retail businesses, an elementary school, a community center, a recreation center and an electrical substation. The remaining 48 acres of the former landfill is undeveloped and portions are heavily vegetated. Portions of OU1 continue to be plagued by illegal dumping. However, the amount is significantly less with the City of New Orleans repairing the breaches in the fence around OU1 and replacing and securing the gates on OU1.

Developed areas near and within the ASL site have historically been and remain predominantly residential, but some commercial, manufacturing and retail/service businesses were established in the surrounding area. Prior to Hurricane Katrina, the Moton Elementary School yard and the Shirley Jefferson Community Center were used year round for recreational purposes. An extensive railroad network is located west and south of the site, and Interstates 10 and 610 merge approximately 0.5 mile west of the site. The Southeast Louisiana Urban Flood Control Project that is being implemented by the Corps will require a portion of OU1 to be utilized, to temporarily relocate some of the railroad network. The Corps will coordinate with EPA during this effort to ensure that the integrity of the cap is maintained.

On August 29, 2005, Hurricane Katrina made landfall on the southeast coast of Louisiana. Hurricane Katrina caused extensive damage and flooding in the area of the ASL site. Residents in the vicinity of the ASL site were evacuated because their homes were severely damaged due to the hurricane and flooding. Currently, the Gordon Plaza Apartments, the Press Park town homes and apartments, and retail businesses are not occupied, and several single family dwellings in the Gordon Plaza subdivision are not occupied or demolished down to the concrete slab. However, a number of the other single family dwellings have been restored or are nearing completion. One of the homes on Gordon Plaza Drive was sold. The previous owner informed the purchaser that the property was remediated and provided supporting documentation to confirm the property was remediated by EPA. The new owner is pleased with their home. The estimated population residing on the site prior to Hurricane Katrina was 1,137 persons with an average household occupancy of 3.05 persons (EPA, 2003). As a result of the flooding left by Hurricane Katrina, a significant reduction in population occurred in the area. Currently the Shirley Jefferson Community Center, the Moton Elementary School, and retail businesses are closed to the public. The current population at the ASL site is unknown. Of the 374 households present on the ASL site, 170 units are owned and operated by the Housing Authority of New Orleans (HANO); 128 units are part of the Gordon Plaza Apartment complex; and 67 units are single family dwellings (EPA, 2003).

The principal surface water bodies in the general site vicinity are Lake Pontchartrain, the Mississippi River and surface water canals. The main surface water features in the immediate site vicinity are the Peoples

Avenue Canal and the Florida Avenue Canal. During periods of low flow, water from the Florida Avenue Canal is pumped into the Mississippi River. During periods of high flow, water is pumped into the Industrial Canal (also known as Inner Harbor Navigation Canal). The Industrial Canal flows north and eventually discharges into Lake Pontchartrain. During the removal action conducted at OU1, OU1 was graded to direct storm water runoff away from the adjacent residential area. Storm water runoff at the site is directed to the Peoples Avenue Canal, to the west of the site, and the Florida Avenue Canal, to the south, by way of a network of storm drains (EPA, 2003).

Lake Pontchartrain is used for recreational activities and fishing on a limited basis. In addition, several municipalities in the area reportedly use Lake Pontchartrain for treated sewage disposal. The lake is not used as a drinking water source. The Mississippi River has been the primary source for municipal drinking water and other water requirements in the greater New Orleans area since approximately 1907. The Mississippi River and the Inner Harbor Navigation Canal are used extensively for commerce (EPA, 2003).

Ground water for commercial use is drawn primarily from the Gonzales-New Orleans aquifer. In 1986, the major pumping stations were located in proximity to the University of New Orleans, the Industrial Canal area north of U.S. Highway 90, the Michoud area and downtown New Orleans. Although used for commercial purposes, 28 of the Gonzales-New Orleans aquifer wells are designated as emergency drinking water supply wells. Based on information provided in the Remedial/Removal Integrated Investigation (RRII) report prepared by Ecology and Environment, Inc., “of these 28 wells, one well appears to be located within one mile of the site; five appear to be located within two miles of the site; four appear to be located within three miles of the site; and three appear to be located with four miles of the site” (EPA, 2003). As of 1986, pumpage had declined to approximately 30 million gallons per day (gpd) from a high of approximately 43 million gpd in 1969. No usage of shallow ground water in the site area has been reported (EPA, 2003).

### 3.3 History of Contamination

The ASL site was first authorized for use as a dump in 1909, when the City of New Orleans was engaged in an effort to phase out the dumping of municipal wastes and trash into various canals in the vicinity and into the Mississippi River. In 1913, disinfectants were applied to the garbage at the dump and starting in 1914, oil was used to burn all refuse received at the dump. Refuse was reportedly composed of household waste collected through city collection systems, and commercial waste brought to this and other dumps by producers and private transporters (EPA, 2003).

A 1921 plan was approved by the city of New Orleans that established the ASL site as the receiving point for the city’s refuse. In 1922, the 400 tons of refuse produced each day by the residents of New Orleans

were primarily disposed of at this landfill. Throughout the 1920s and 1930s the ASL site continued to be used as the primary waste disposal area for New Orleans (**EPA, 2003**).

In 1948, area residents complained about the smell and smoke from occasional dump fires. In response to uncontrolled fires and trespassers at the dump, the city transformed a portion of the dump into a sanitary landfill. Reportedly, during the 1940s and 1950s the ASL site area was routinely sprayed with the pesticide dichloro-diphenyl-trichloroethane (4,4'-DDT) (**EPA, 2003**).

On October 1948, the city began excavation on the northern part of the site to create the sanitary landfill. Trenches were excavated, cleared with drag lines, and prepared to receive wastes, which were to be covered with earth. Three cells were excavated to receive refuse. The landfill continued to receive increasing quantities of waste until the city constructed its Florida Avenue and Seventh Street incinerators in 1957 (**EPA, 2003**).

Open burning continued at the landfill, and the public effort to close the facility intensified. According to the Mayor's Annual Report for 1950, a building was constructed as part of the city's recycling effort. Salvageable materials were picked from the refuse and unsalvageable material was landfilled (**EPA, 2003**).

In 1965 and 1966, ASL site was used on an emergency basis to accept debris and spoiled foodstuffs resulting from Hurricane Betsy in September 1965. Records indicate that approximately 300 truckloads of wastes per day were disposed of in the ASL site for a six month period. Open fires were used to burn much of the debris. The Landfill was officially closed in 1966, however, an aerial photograph from 1967 shows some type of operation continuing at the ASL site (**EPA, 2003**).

In the 1970s, development of portions of the former landfill was initiated by city agencies. Fill was brought into the area for the subsequent construction of multiple-family HANO public housing. In 1975, the Orleans Parish School Board purchased a vacant lot on the ASL site for the purpose of constructing a school. After numerous engineering studies, the school board commissioned the construction of Moton Elementary School in 1985 (**EPA, 2003**).

### 3.4 Initial Response

Prior to 1994, access to OU1, the undeveloped portion of the former landfill, was unrestricted, allowing unauthorized waste disposal and potential exposure to Contaminants of Potential Concern (COPCs) such as lead, arsenic, and carcinogenic Polynuclear Aromatic Hydrocarbons (cPAHs) found in the surface and subsurface soil. In a time-critical removal action implemented concurrently with the RRII, EPA installed an eight-foot high, chain link fence topped with barbed wire around the entire undeveloped portion of the former landfill (OU1). Fencing activities were conducted from March through May 1994. Several gates

were installed to facilitate vehicular access by utility companies to electrical lines that traverse the site (EPA, 2003).

The EPA originally organized the work for this site into five Operable Units (OUs). The OUs are:

OU1 – Undeveloped Property

OU2 – Residential Properties (consists of the Gordon Plaza Apartments, single-family dwellings in Gordon Plaza subdivision, the Press Court town homes, and retail businesses)

OU3 – Shirley Jefferson Community Center

OU4 – Moton Elementary School, which includes Mugrauer Playground

OU5 - Ground Water

The primary contaminant of concern addressed by the cleanup at the ASL site was lead. Additional contaminants of potential concern (COPCs) included arsenic and carcinogenic polynuclear aromatic hydrocarbons (cPAHs). A ROD for OU4 and OU5 was signed on September 2, 1997. An Action Memorandum for OU1, OU2, and OU3 was signed on September 2, 1997. The ROD for OU1, OU2, and OU3 was signed on April 4, 2002.

The 1997 ROD for OU4 and OU5 required no further action because there was no risk to human health. The Moton Elementary School was built on a three-foot layer of clean fill, which addressed all risks posed by this portion of the site. Regarding the ground water (OU5), residents in the site area were confirmed to be served by the municipal drinking water supply of the City of New Orleans, and information obtained from the Louisiana Department of Environmental Quality (LDEQ) during site investigation activities confirmed that ground water beneath the site is not used for any beneficial purpose and should not be considered a potential source of drinking water. In addition, site ground water presents no other pathway of exposure (to surface water, for example). The ROD for OU4 and OU5 recommended that both OUs be deleted from the NPL. After public notice and an opportunity for public comment, OU4 and OU5 were deleted from the NPL on June 15, 2000 (EPA, 2002).

The 1997 Action Memorandum for OU1 included the following:

- 1) The undeveloped property (48 acres) was cleared of vegetation and graded.
- 2) A layer of geotextile filter fabric was placed on the subgrade and covered with 12 inches of clean fill. The purpose of the geotextile fabric was to create a physical barrier between clean cover soils and contaminated subsoil (NOTE: The geotextile filter does not act as a liner; it is simply a “notice” that if you are digging you have reached the limit of “clean” soil).

The 1997 Action Memorandum for OU2 and OU3 included the following:

- 1) The top 24 inches of existing soil and waste material on the residential properties and community center were excavated and transported offsite for disposal.

- 2) Permeable geotextile filter fabric was placed on the subgrade and covered with 24 inches of clean fill (Again, NOTE: This geotextile filter fabric does not act as a liner; it is simply a “notice” that if you are digging you have reached the limit of “clean” soil).

The RRII fieldwork was conducted from April 4 through June 20, 1994. Samples of surface and subsurface soil, sediment, surface water, ground water, indoor and outdoor air, dust, tap water, garden produce, and paint chips collected during the field investigation were submitted to laboratories for analysis (EPA, 2002a).

EPA conducted a second time-critical removal action at the site in February 1995 based on information presented in the RRII report. The removal action consisted of removing playground equipment and covering contaminated soil at OU3 with heavy grass sod. A third time-critical removal action was completed in March 1996 by the EPA to repair the fence surrounding OU1, which had been damaged by trespassers. Also, EPA conducted an Engineering Evaluation and Cost Analysis (EE/CA) to evaluate alternative removal actions for the site.

In September 1997, EPA issued an Action Memorandum authorizing a Non-Time Critical Removal Action for OU1, OU2, and OU3. The removal action on OU1, described more completely in the 1997 Action Memorandum consisted of clearing the 48-acre area, grading it to direct storm water runoff away from the residential area, laying a permeable geotextile mat followed with orange fencing (used as a visible marker), covering the mat/marker with twelve inches of clean fill, and re-establishing a vegetative layer on the clean fill. The removal action on OU2 and OU3 consisted of excavating 24 inches of soil, placing a permeable geotextile mat/marker on the subgrade, backfilling the excavated area with clean fill, covering the clean fill with grass sod, landscaping and yard restoration, driveway and sidewalk replacement, and final detailing. The response action on OU1, OU2, and OU3 was performed in two phases; the first phase began October 15, 1998, and concluded February 2, 2000. The second phase began in August 2000 and concluded in April 2001. After conclusion of the second phase response action, the EPA had implemented the removal action on 99% of the site (nine private homeowners elected not to participate in the removal action). At the conclusion of each phase of the response action, a Closeout Completion Package was provided to each owner of property in Operable Unit 1, 2, or 3 who participated in the removal action. The package contained; a Closeout Letter; a Certificate of Completion; and instructions on how to maintain the permeable cap, including instructions for any necessary excavation below the geotextile mat/marker. These instructions are provided in [Attachment 6](#) to this five-year review report. Owners of properties that were not part of the response action received a letter and fact sheet from EPA stating that maintaining the surface vegetation will minimize the potential exposure to contaminants in the subsurface soils and will prevent soil erosion. The letter also informed the residents that the contaminants of concern do not readily dissolve in water, but adhere to soil particles. Thus, in the event of a flood, the contaminants in the subsurface soil are expected to remain in place and not pose an additional risk of exposure to the residents

(EPA, 2003).

EPA coordinated with the utility companies serving the communities within the site's boundary. The EPA developed Technical Abstract papers providing instructions for utility repair excavations which will ensure the continued integrity of the permeable barrier on those properties where it was installed. Instructions for excavation both above and below the geotextile barrier were included in the paper. Copies of the Technical Abstracts were provided to all of the utility companies and also made available at the repositories. The EPA also conducted a field demonstration of excavation and backfill procedures for utility companies at the site on December 1, 1999. The 2002 ROD for OU1, OU2, and OU3 required no further action as the cleanup under the 1997 Action Memorandum addressed all contamination.

### 3.5 Basis for Taking Action

The purpose of the response actions conducted at the ASL Superfund Site was to protect public health and the environment from releases or threatened releases of hazardous substances from the site. Exposure to affected soil, ground water, surface water and sediment was determined to be associated with human health risks higher than the acceptable range. The primary threats that the site posed to public health were: direct and indirect contact, ingestion, and inhalation of soil and waste that contain COPCs at concentrations that could pose unacceptable risks to a potentially exposed individual and ecological receptors; and the release of COPC-contaminated dust to the air at concentrations that could adversely affect human health and the environment. There was no identified pathway for exposure to impacted ground water.

## 4.0 Remedial Actions

No remedial actions have been performed at the ASL site. The time-critical and non-time critical removal actions performed at the site were found to be sufficient to protect human health and the environment, and the RODs for all five OUs specified a remedy of no further action. These actions were all performed prior to the current five-year review period. This section provides a brief description of the remedy selection process described by the RODs. It also describes the ongoing maintenance procedures required to maintain the cover placed during the removal actions.

### 4.1 Remedy Objectives

The objective of any selected remedy is to protect human health and the environment. For the ASL site, abatement of risks to human health and the environment from site contaminants was accomplished by completion of early removal actions and a large-scale non-time-critical removal action (EPA, 2002a).

### 4.2 Remedy Selection

The ROD for OU1, OU2, and OU3 was signed on April 4, 2002. The ROD for OU4 and OU5 was signed on September 2, 1997. Because previous actions were found to have addressed unacceptable risks posed

by site contaminants, EPA determined that No Further Action was the selected remedy necessary to protect public health or welfare or the environment at OU1, OU2, OU3 (**EPA, 2002**), and OU4 (**EPA, 1997a**). No further action was also selected for OU5 (ground water) due to a lack of exposure pathways (**EPA, 1997a**).

### 4.3 Remedy Implementation

Based on the time-critical and non-time-critical removal actions performed and the findings described in the RODs for OU1, OU2, OU3, OU4, and OU5, no further action was the selected remedy, and no remedial action was performed. The time-critical and non-time-critical removal actions performed at the site provided for the protection of human health and the environment.

### 4.4 Operations and Maintenance

Because hazardous materials remain onsite following the time-critical and non-time-critical removal actions, certain Operations and Maintenance (O&M) activities are required to maintain the protectiveness of the remedy. O&M activities involve maintenance of the soil/geotextile and vegetative covers. These maintenance activities are the responsibility of each property owner. Post-closure care of the clean soil/geotextile and vegetative cover consists of routine activities to maintain the integrity of the surface soil and vegetation on each property. Surface maintenance includes filling holes above the geotextile barrier with clean soil and continued cultivation of vegetation to ensure a healthy cover over the clean fill. In the event that excavation below the geotextile barrier is required, EPA provided property owners with procedures for excavation of soil from below the barrier and restoration of the geotextile barrier (**EPA, 2003**).

Instructions for maintenance of the cover were provided for each OU property owner when the site work was completed, in the form of a Closeout Letter for OU1, OU2, and OU3 Property Owners. These instructions are reproduced as **Attachment 6** to this five-year review report. A follow up letter was also sent to OU1, OU2, and OU3 property owners to provide supplemental information regarding the importance of the Certificate of Completion provided in the Closeout Letter, the potential impact a natural disaster might have on the properties, and the status of plans to review the soil removal action (**EPA, 2002a**).

EPA also coordinated with the utility companies serving the communities within the site's boundary. The EPA developed Technical Abstract papers providing instructions for utility repair excavations which will ensure the continued integrity of the permeable barrier on those properties where it was installed. Instructions for excavation both above and below the geotextile barrier were included in the paper. Copies of the Technical Abstracts were provided to all of the utility companies and also made available at the repositories. These abstracts are updated periodically and provided to LDEQ, the U.S. Army Corps of



Engineers (USACE), and HANO, and to the city to share with the utility companies. Prior to completing the response actions at the site, EPA conducted a field demonstration of excavation and backfill procedures for utility companies at the site (EPA, 2003).

Access to OU1 is currently restricted by an eight-foot high chain-link security fence with locked gates. Semiannual inspections of the fencing, gates and the soil cover are performed by LDEQ personnel. The Action Memorandum called for removal of the fence around OU1 once the non-time-critical removal action was completed; however, at the request of OU1 property owners, EPA left the fence in place at the conclusion of the removal action. In accordance with the Consent Decree, the city of New Orleans repairs the fence when needed.

## 4.5 Progress since Initiation of Removal Actions

As part of the removal actions performed for the site, approximately 69,032 tons of material were excavated and disposed. Approximately 70,081 cubic yards of sand backfill, and 125,865 cubic yards of topsoil were used in backfill, capping, and restoration on the site. Also, 55,732 square yards of sod were installed. Fences, gates, asphalt and concrete roadways, driveways, and sidewalks removed or damaged during the removal action were replaced or repaired (EPA, 2003). At the conclusion of these removal actions, EPA and LDEQ agreed that response actions for the site were complete and that no further action was required, and information describing care of the site was distributed to property owners and utility companies.

## 5.0 Progress since the Second Five-Year Review

The Second Five-Year Review of the ASL site was signed on April 25, 2008. The findings of the second five-year review, the status of recommendations and follow-up actions, the results of implemented actions, and the status of any other issues are described in the following sections.

### 5.1 Recovery Progress since Hurricanes Katrina, Rita, and Isaac

During the second five-year review period, Hurricane Katrina made landfall on the coast of Louisiana, near the City of New Orleans, on August 29, 2005, resulting in severe damage from wind and flooding. Several of the flood-protection levees failed as a result of the hurricane, and most of the City of New Orleans, including the ASL site, was flooded. On September 24, 2005, Hurricane Rita made landfall west of New Orleans, and parts of New Orleans (not including the ASL site) were again flooded. The EPA performed an assessment of NPL sites to determine if site conditions or remedies already in place were adversely impacted. On October 1 and 2, 2005, CH2M HILL, a contractor for the EPA, conducted a site inspection and collected soil samples at the ASL site as part of this assessment. On October 28, 2005, additional sediment samples were collected by a different contractor (Weston Solutions) at the ASL site. The purpose of the inspection and sampling events was to assess the impact Hurricanes Katrina and Rita



may have had at the site. The results of the sampling indicate that flooding did not cause any upward movement of lead, the primary contaminant of concern at the site, through the remediated soils, and EPA determined the remedy for the ASL site was not affected by Hurricane Katrina (**EPA, 2006**). Samples of sediments deposited by flooding in the area were found to contain levels of benzo(a)pyrene that exceeded LDEQ Risk Evaluation/Corrective Action Program (RECAP) criteria (**EPA, 2007a**). LDEQ conducts semi-annual inspections to monitor the protectiveness of the remedy.

On August 29, 2006, The U.S. Department of Health and Human Services prepared a Health Consultation in response to Hurricane Katrina sampling assessment for the ASL site. The primary goals of this Health Consultation were to determine whether sediments introduced by floodwaters at the ASL site posed a threat to human health and to establish what further public health actions, if any, may be needed at the ASL site.

Data from multiple sampling events was assessed for the preparation of the Health Consultation, including data collected on October 2005, and a re-sampling event of one of the sample locations performed by LDEQ on November 19, 2005. In addition, data from a sampling event performed by EPA and LDEQ on February 16-17, 2006, to re-examine levels of benzo(a)pyrene at the site, was evaluated in the Health Consultation. The consultation concluded that the majority of the contaminants detected in flood-deposited sediments and soils at the ASL site posed no apparent public health hazard to residents at the site. PAH concentrations of concern were found at the north end of the site. Benzo(a)pyrene concentrations appeared to have undergone degradation from the first sampling event to the most recent sampling event (**DHHS, 2006**).

On December 1, 2006, conveyance notifications were filed at the Orleans Parish Conveyance Office for the nine properties that elected not to participate in the removal action performed at OU2. The conveyance notices were filed to notify the public that soil on these properties may contain contaminant levels that are unacceptable for non-industrial use of the property as described in the LDEQ RECAP, Section 2.9. Copies of the conveyance notifications were included in the Second Five Year Report.

The second Five-Year Review highlighted recovery efforts that were occurring in the community from Hurricanes Katrina (that occurred on August 29, 2005) and Rita (that occurred on September 24, 2005). EPA also collected samples in September 2005 to determine if flood waters had impacted the response action that was completed at the site in 2002. The cap had not been compromised by the flood waters, and the condition of the permeable soil cap. The findings confirmed that the integrity of the installed cap was still effective and intact.

LDEQ performs semi-annual inspections at the site. Outside of notifying EPA of breaches observed in the fence around OU1, no new developments have been reported. As stated earlier, the City of New Orleans is repairing the fence around OU1, when breaches are reported or observed. Seven years later

(August 30, 2012), almost to the day that Hurricane Katrina struck New Orleans, Hurricane Isaac

occurred. Though the site was inundated with heavy rains, the integrity of the cap remained the same, and the residents of the Gordon Plaza subdivision, continued their recovery efforts.

## 5.2 Consent Decree between EPA and the City of New Orleans

On January 23, 2008, the City of New Orleans agreed to a Consent Decree with the United States of America on behalf of the Administrator of the EPA. The objectives of entering into the Consent Decree are to protect the remedy at the ASL site and thus protect public health and the environment. Although both parties have agreed on the terms of the Consent Decree, the Decree has not been lodged with the United States District Court. The Department of Justice will publish in the Federal Register a Notice informing the public that the proposed Consent Decree has been lodged with the Court, and solicit public comment for a period of thirty days. After the close of the comment period, the United States will evaluate the comments received, if any, and advise the Court whether the United States requests entry of the Consent Decree. A copy of the Consent Decree is presented in [Attachment 7](#).

The Consent Decree states that the City of New Orleans shall conduct and/or implement the following work in order to maintain the cap and provide for appropriate restrictions on use and excavation of the undeveloped property OU1 (**CNOLD, 2008**):

- Maintain and repair the security fence around the OU1 undeveloped property for a period of ten years from the date of entry of the Decree or until the site is deleted from the NPL, or EPA otherwise approves the removal of the fence, whichever is sooner.
- Mow the vegetation at least twice per year, and otherwise maintain its right of ways within OU1, in order to maintain a stable vegetative cover. In addition, the City will use its available authorities to
  - (a) Require that landowners mow and otherwise maintain the grass vegetation on their properties, or
  - (b) Undertake the necessary maintenance directly.
- Provide within 60 days from the date of entry of the Decree, the Technical Abstract for Utilities within the ASL site to all non-city owned utilities operating within the ASL site area.
- Within 60 days from the date of entry of the Decree, the City of New Orleans will join and maintain its membership in the LAOne Call program and designate an office within the city as a point of contact to provide the Technical Abstract for Utilities Operating within the ASL site to be followed when excavating beneath the geotextile mat at the site.
- Within 60 days from the date of entry of the Decree, the City of New Orleans will direct that all of its agencies and departments, including the Sewerage and Water Board (SWB) of New Orleans, incorporate the Technical Abstract for Utilities Operating within the ASL site as standard operating

procedures when working within the site.

- The City of New Orleans will ensure that within 60 days of entry of the Decree and on an annual basis thereafter, the SWB includes in bills to customers owning or renting property at the site the protocol for Post- Removal Maintenance for Property Owners. Alternatively, within 60 days of entry of the Decree and on an annual basis thereafter, the City of New Orleans will mail the protocol to property owners and renters at the ASL site.
- Within 45 days from the date of entry of the Decree, the City of New Orleans will designate an appropriate landfill facility for the disposal of soils excavated and removed from beneath the geotextile mat. This disposal facility shall be identified in the Technical Abstract for Utilities Operating within the ASL site and in the protocol for Post-Removal Maintenance for Property Owners.
- Within 30 days of entry of this Decree, the City of New Orleans will designate an official of the City as the Project Coordinator who will be responsible for ensuring the City's compliance with the requirements of the Decree.

In addition, the implementation of Access and Institutional Controls (ICs) were included as part of the Consent Decree.

The Consent Decree also states that commencing on the date of lodging of the Decree, the City of New Orleans shall refrain from using the ASL site in any manner that would interfere or adversely affect the implementation, integrity, or protectiveness of the remedy. Site use and activity restrictions include, but are not limited to, disturbances to the surface or subsurface of the ASL site, including filling, drilling, excavation or construction on the site that is unrelated to the remedy measures implemented at the ASL site, unless such excavation is consistent with the Technical Abstract for Utilities. The Consent Decree states that in order to implement these restrictions, the City of New Orleans will have to execute and record in the Recorder's Office (or Registry of Deeds or other appropriate land records office of Orleans Parish, State of Louisiana), an environmental protection easement. The easement is intended to run with the land that grants a right of access for the purpose of conducting any activity related to the Consent Decree. The City of New Orleans shall grant the access rights and the rights to enforce the land use restrictions to the United States, on behalf of EPA, and its representatives, and the State and its representatives (**CNOLD, 2008**).

The Consent Decrees includes an additional restriction on excavations within the ASL site in the form of a zoning ordinance and/or excavation permit requirement, to be enacted by the City of New Orleans, to protect and ensure the integrity and protectiveness of the remedy. The Consent Decree requires the City of New Orleans to submit to EPA for approval, a proposed zoning ordinance and/or permit requirement.

The intent of the proposed permit requirement/zoning ordinance is to require owners or lessees of land within the ASL site who seek to excavate soil to a depth of greater than 18 inches to provide notice to the appropriate City department of their intent to excavate and to comply with the Post-removal maintenance instructions for the site for the handling of contaminated soils and repair of the soil/geotextile mat. The notice should be provided no less than 3 days prior to the proposed excavation, and be available to those persons in a timely and readily accessible manner. The City of New Orleans has adopted Ordinance No. 22,893 Mayor Council Series (M.C.S.), which imposes the permitting requirement for excavations in the area of the ASL site as required by the Consent Decree. A copy of the city ordinance is presented in [Attachment 8](#). Detailed information regarding Access and ICs can be found in the Consent Decree provided in [Attachment 7](#).

### 5.3 Protectiveness Statements from Second Five-Year Review

The second five-year review confirmed that the response actions performed at the site are considered protective of human health and the environment because the waste has been removed or contained and protected from erosion, and a barrier has been constructed to prevent exposure to the remaining impacted soil. Because the completed response actions for the ASL site are considered protective with the existence of surface vegetation and a soil barrier covering subsurface contaminants that are expected to remain in place over time, the remedy for the site, including all five OUs, is protective of human health and the environment, and will continue to be protective if the action items identified in this five-year review are addressed.

The time-critical and non-time critical removal actions performed at the ASL site are considered protective of human health and the environment because contaminated soil has been removed or contained and is protected from erosion, and a barrier has been constructed to prevent exposure to the remaining impacted soil. The soil barrier covering the site is in place and expected to remain intact, restricting exposure to remaining subsurface contamination. The EPA and the City of New Orleans have signed a Consent Decree that is addressing the issues and recommendations identified in the Second Five-Year Review Report with an update provided in this report. Because the completed response actions for the ASL site currently prevent exposure to remaining site contamination, the remedy is considered protective of human health and the environment in the short-term and long-term—given that the remedy has been effective for over eleven years, The remedy will continue to be protective if the recommendations and follow-up actions identified in the five-year review continue.

### 5.4 Second Five-Year Review Recommendations and Follow-up Actions

The second five-year review of the ASL site, signed on April 25, 2008, recommended the following follow-up actions:

- First, measures should be adopted to remind the property owner of OU1, where rutting was observed, to maintain the cover. Instructions and specifications for maintenance should be included in the reminder. Also, additional guidance should be provided to OU#2 property owners for handling/disposal of soils excavated below the barrier that cannot be returned to the excavated area beneath the barrier to limit potential exposure to these materials. Finally, procedures should be established for forwarding maintenance instructions to new property owners.

## 5.5 Status of Recommended Actions

The current status of implementation of the recommendations included in the second five-year review report is summarized in [Table 2](#).

## 6.0 Five-Year Review Process

This Third Five-Year Review for the ASL site has been conducted in accordance with EPA's Comprehensive Five-Year Review Guidance dated June 2001 (**EPA, 2001a**). Interviews were conducted with relevant parties; a site inspection was conducted; and applicable data and documentation covering the period of the review were evaluated. The activities conducted as part of this review are described in the following sections.

### 6.1 Administrative Components

The five-year review for this site was initiated by the EPA. The review team was led by the EPA Region 6 Remedial Project Manager (RPM) and Community Involvement Coordinator (CIC) for this site, Ms. Ursula Lennox and Ms. Janetta Coats, respectively. Agency representatives assisting the review team included Mr. Edwin Akujobi, LDEQ, who participated in the site inspection and provided information related to the ASL site. The components of the review included community involvement, document review, data review, a site inspection, interviews, and development of this Third Five-Year Review Report.

### 6.2 Community Involvement

A public notice announcing initiation of the third five-year review was published in *The Times-Picayune* during January 2013. Upon signature, the five-year review report will be placed in the information repositories for the site, including the Norman Mayer Gentilly Library Branch in New Orleans, Louisiana, the LDEQ office in Baton Rouge, Louisiana, and the EPA Region 6 office in Dallas, Texas. A public notice will be published in *The Times-Picayune* to summarize the findings of the review and announce the availability of the report at the information repositories. A copy of the public notice is provided as [Attachment 5](#) to this report.

### 6.3 Document Review

The Third Five-Year Review for the ASL site included a review of relevant site documents, including decision documents, construction and implementation reports, the second five-year review report, Hurricane Katrina Evaluation Report and the Health Consultation report, documents and notices provided by HANO and FEMA involving plans being developed for work that will be performed on portions of OU2 and OU1. Documents that were reviewed are listed in [Attachment 1](#).

### 6.4 Data Review

From the site investigation that was conducted January 30-31, 2013, the integrity of the soil cap across the entire site continues to remain intact.

### 6.5 Interviews

Interviews were conducted with (b) (6) local resident, (b) (6) local resident, Mr. Edwin Akujobi, LDEQ; Mr. Charles Allen III, Advisor and Director, Coastal and Environmental Affairs for the City of New Orleans; and Robert Barbour, General Counsel – Housing Authority of New Orleans (HANO). Copies of the Interview Record Forms are provided in [Attachment 2](#). Discussion was as follows:

- Areas around the site are over grown with trees and weeds and abandoned cars. Illegal dumping continues to be a concern.
- Cox Cable continues to deny residents service in the Gordon Plaza Community.
- A residence has been denied participation in the Road Home Program that provides funds to elevate homes. A Superfund site does not qualify for the Program.
- A resident was denied participation in Home Grant Mitigation Program (HGMP) because the home is located on a Superfund site.
- No issues with EPA. EPA has made the community safer.
- Site inspections confirm the response action was completed and the site is being maintained.
- In past years, there were breaches in the OU1 fence reported to EPA. Inspections showed fence repairs were completed for OU#1 by the city and that OU2 and OU3 ground surfaces are fenced and maintained by HANO.
- After some years mowing the grass and maintaining the fence around the undeveloped land, the city believes it is time to explore safe and permissible reuse options.
- FEMA developed a Memorandum of Understanding in August 2013, that is being circulated for signature between the Department of Homeland Security/Federal Emergency Management Agency (DHS/FEMA); the United States Environmental Protection Agency (EPA); the Housing Authority of New Orleans (HANO); and the City of New Orleans (CNO) for the purpose of establishing the roles and responsibilities of each party regarding demolition of the HANO-

owned structures located in the Press Park Residential Development and Community Center Site, that is located on the Agriculture Street Landfill Site. FEMA is committed to keeping all stakeholders up to date and engaged on plans as they develop. HANO's damaged properties are surrounded by a secured fence and that the HANO Police Department conducts regular patrols of the area. HANO is still considering options for redevelopment or transfer of the Press Park site.

## 6.6 Site Inspection

The EPA coordinated efforts with LDEQ and a site inspection was conducted at the ASL site on January 30-31, 2013. The completed site inspection checklist is provided in [Attachment 3](#). Photographs taken during the site inspection are provided in [Attachment 4](#).

General site conditions on OU1, have improved significantly since the second five-year review. Semi-annual inspections by LDEQ alerted EPA of the breeches in fencing and LDEQ secured the gates with their locks. This hampered the illegal dumping on the site. As a result of the cooperative effort that is maintained between EPA, LDEQ, and the City of New Orleans, when report of breaches were made by LDEQ and relayed to the City of New Orleans, repairs were made, trash in visible areas were removed, gates were repaired and locked, and vegetation in the right of ways was maintained. For OUs # 2, 3, and 4, property managed by HANO is also fenced and secured with locked gates, and vegetation is maintained on a regular basis. The Gordon Plaza subdivision has recovered significantly and yards are well manicured. Yards are also maintained on residential properties that are not occupied. Though graffiti covers the Press Park units and Moton School, the vegetation is maintained. Dumping still occurs in isolated areas such as along Industry Street and streets that are not traveled frequently. This can be seen from the picture in [Attachment 4](#).

Though the City of New Orleans reported that the Gordon Plaza Senior Citizens apartments were purchased by a private buyer, the units still remain in disrepair. Nonetheless, the vegetation around these apartments is also maintained. The last second year review observed leaking fire hydrants within the community. During the site investigation, no leaking fire hydrants were observed.

EPA has taken a proactive role in preventing issues from occurring at the site by maintaining communications and coordinating with the City of New Orleans, the Corps, FEMA, and HANO on projects that are being pursued near and on the site. HANO is pursuing plans to demolish the Press Park structures that were damaged beyond repair by Hurricanes Katrina and Rita. Some of the townhomes are privately owned and are part of a class action lawsuit. As a result, HANO is evaluating plans that will possibly leave these units in place with engineering controls. This option will require continuous operation and maintenance, to minimize safety hazards from unstable structures Foundations will remain in place to serve as a barrier from subsurface waste. FEMA will continue to keep all



stakeholders up to date and engaged on plans as they develop.

## 7.0 Technical Assessment

The five-year review must determine whether the remedy at a site is protective of human health and the environment. The EPA guidance describes three questions used to provide a framework for organizing and evaluating data and information and to ensure all relevant issues are considered when determining the protectiveness of a remedy. These questions are assessed for the site in the following paragraphs. At the end of the section is a summary of the technical assessment.

### 7.1 Question A: Is the Remedy Functioning as Intended by the Decision Documents?

The documents that describe the response action decisions for the site are the September 1997 Action Memorandum for Non-Time Critical Removal Action at OU1, OU2, and OU3, the September 1997 ROD for OU4 and OU5, and the April 2000 ROD for OU1, OU2, and OU3. EPA and LDEQ have concurred that the response actions for the site defined by these documents are complete. Based on the data review, the site inspection, interviews, and the area's continued recovery from Hurricane Katrina, the selected response actions (removal actions followed by a no further action ROD) continue to function as intended by the decision documents. Given that the worst case scenario has occurred at the site (i.e. Hurricane Katrina), without impacting the selected remedy, EPA is confident with the proper adherence to the institutional controls and technical abstract that the remedy will continue to be effective in years to come.

The undeveloped property (OU1) is currently zoned as commercial/light industrial, preventing land development of the property for residential use. The comment period for the Notice of Intent to Delete the site from the National Priorities List concluded on October 25, 2004. The Deletion of the Site from the NPL was put on hold until additional ICs were put in place. Since the Second Five-Year Review Report, institutional control measures have been implemented for the ASL site by means of Ordinance No.22, 893 M.C.S., which was adopted by the New Orleans City Council on November 15, 2007. The ordinance requires a permit for excavation within the ASL area in order to ensure that any excavation is performed in accordance with the protocols established by the EPA. The city is complying with the ordinance and the Consent Decree and as a result, EPA plans to resume the deletion process in 2014.

### 7.2 Question B: Are the Exposure Assumptions, Toxicity Data, Cleanup Levels, and Remedial Action Objectives Used at the Time of the Remedy Selection Still Valid?

**Changes in Exposure Pathways, Toxicity, and Other Contaminant Characteristics.** EPA's dioxin reassessment has been developed and undergone review for many years, with the participation of scientific experts in EPA and other federal agencies, as well as scientific experts in the private sector and



academia. The Agency followed current guidelines and incorporated the latest data and

physiological/biochemical research into the reassessment. On February 17, 2012, EPA released the final human health non-cancer dioxin reassessment, publishing an oral non-cancer toxicity value, or reference dose (RfD), of  $7 \times 10^{-10}$  mg/kg-day for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) in EPA's Integrated Risk Information System (IRIS).

The new dioxin screening levels in soil are 0.050 ug/kg (50 ppt) and 0.664 ug/kg (664 ppt) as toxic equivalents (TEQs) for residential and industrial/commercial soil, respectively. Before any kind of removal action taken at the site, none of the surface and subsurface soil had dioxin levels as TEQs exceeding the then generally accepted clean up level of 1 ug/kg (1 ppb or 1,000 ppt) for residential soil. The maximum level of surface soil dioxin as TEQs found at Press Park Community Center was 0.087 ug/kg with an average of 0.043 ug/kg. The maximum level of surface soil dioxin level for OU1, the undeveloped property, was 0.31 ug/kg and an average of 0.046 ug/kg. The maximum subsurface (1.5 to 5.5 feet BGS) soil for the developed residential area was 0.525 ug/kg with an average of 0.125 ug/kg. Surface soil samples were also collected from an adjacent area to the site, the maximum soil dioxin level was 0.010 ug/kg with an average of 0.0017 ug/kg. These dioxin levels were before EPA took any soil removal action for the site. The soil dioxin level did not drive the soil removal decision. The soil lead concentration at the site drove soil removal efforts. The removal action on OU1, the undeveloped property, consisted of clearing the 48-acre area, grading it to direct storm water runoff away from the adjacent residential area, laying a permeable geotextile mat followed with orange fencing (to serve as a highly visible marker), covering the mat/marker with twelve inches of clean fill, and re-establishing a vegetative layer on the clean fill. The removal action on OU2 (residential properties) and OU3 (the Shirley Jefferson Community Center formerly known as Press Park Community Center consisted of excavating twenty four inches of soil, placing a permeable geotextile mat/marker in the subgrade, backfilling the excavated area with clean fill and covering the clean fill with grass sod. This reassessment of dioxin site evaluation and the removal action taken on site determined that the site and at background locations do not pose a potential human health risk from exposure to dioxin in soil above the new dioxin values. This assessment provides additional confirmation that the remedy continues to provide protection of human health.

There have been no changes in human health or ecological exposure pathways for the site since completion of the first five-year review or the floods from Hurricanes Katrina and Rita. In addition, no new contaminants or routes of human exposure have been identified for the site as part of this five-year review. Post-remediation site conditions have eliminated or reduced human health exposure pathways present at the site.

## **Changes in Applicable or Relevant and Appropriate Requirements (ARARs).** The RODs for the

ASL Site selected no further action to address the site, and therefore no ARARs were identified in the RODs. EPA Region 6 Risk Based Concentrations (RBCs) have been identified as TBC requirements. RBCs are not regulations and are screening levels; they are concentrations of chemicals in soil that correspond to an estimated excess cancer risk of  $1 \times 10^{-6}$  for an age-integrated residential receptor (exposure during childhood and adult years combined) using standard default exposure assumptions, and are intended to serve as a screening mechanism for COPCs at a site. If the concentrations of a COPC exceed its respective RBC, further action may be warranted at the site. No changes in Regional Screening Levels (RSLs), the current Region 6 RBCs, have occurred that would call into question the protection of human health.

### **7.3 Question C: Has any Other Information Come to Light that Could Call into Question the Protectiveness of the Remedy?**

Other information that might call into question the protectiveness of the remedy include potential future land use changes in the vicinity of the site or other expected changes in site conditions or exposure pathways. HANO is developing plans to demolish the Press Park units that are part of OU2, and the U.S. Army Corps of Engineers are developing plans to use a portion of OU1 as part of a Phase IV Florida Avenue Canal Drainage Project, which is part of the Southeast Louisiana Urban Flood Control Project. Both entities are consulting EPA and other stakeholders on the plans as they are developed, to ensure that the effectiveness and protectiveness of the remedy is maintained.

### **7.4 Summary of the Technical Assessment**

The technical assessment, based on the data review, site inspection, technical evaluation, and interviews, indicates the removal actions performed at this site have been implemented as intended by the decision documents. The assumptions used at the time of remedy selection are still valid. There are no early indicators related to the remedy that would suggest potential problems with the remedy at the site. There are no changes in contaminant toxicity or other contaminant characteristics identified that affect the cleanup levels originally established for the site, or affect the protectiveness of the remedy. No new laws or regulations have been promulgated or enacted that would call into question the effectiveness of the remedy to protect human health and the environment. Though plans are being developed by HANO for the demolition of the Press Park housing units on OU2, and by the U.S. Army Corps of Engineers for the use of a portion of OU1 for the Phase IV Florida Canal expansion project, no other information involving potential future land use within the site have been identified as part of this five-year review that might call into question the protectiveness of the selected remedy.

As described in the site inspection ([Section 6.6](#)), it was noted that though mowing of the vegetative cover in the core area of OU1 has not occurred, the City of New Orleans is maintaining and repairing the fence and gates on OU1, and the vegetation in the right of ways at the OU1 property. However, with the exception of the core area on OU1, vegetation is being well maintained over the entire site, compared to what was visible during the Second Five-Year Review. With the continued maintenance of the site, the implemented remedy will remain intact and protective of human health.

## 8.0 Institutional Controls

Institutional Controls (ICs) are generally defined as non-engineered instruments such as administrative and legal tools that do not involve construction or physically changing the site and that help minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by limiting land and/or resource use (**EPA, 2005**). ICs are used for many reasons including restriction of site use, modifying behavior, and providing information to people (**EPA, 2000**). ICs may include deed notices, easements, covenants, restrictions, or other conditions on deeds, and/or ground water and/or land use restriction documents (**EPA, 2001a**). The following paragraphs describe the ICs implemented at the site, the potential affect of future land use plans on ICs, and any plans for changes to site contamination status.

### 8.1 Types of Institutional Controls in Place at the Site

On December, 2006, conveyance notifications were filed at the Orleans Parish Conveyance Office for the nine properties that elected not to participate in the removal action performed at OU2. The conveyance notices were filed to notify the public that soil on these properties may contain contaminant levels that are unacceptable for non-industrial use of the property as described in the LDEQ RECAP, Section 2.9.

The undeveloped property (OU1) is still zoned for commercial/light industrial use, preventing land development of the property for residential use.

As part of the terms of the CD, the City of New Orleans adopted Ordinance No. 22,893 M.C.S, which imposes the permitting requirement for excavations in the area. As part of this ordinance, the city joined LAOne Call to also ensure all contractors and utility companies that perform excavations in the area, notify the city first. This enables the city to ensure that work that is performed in the area is in accordance with the excavation protocol that was provided by and updated by EPA since the completion of the remedy. The city also has worked with their various departments and utility companies to ensure that the excavation protocols are part of the standard operating procedures. This also ensures excavation protocols in the area are maintained.

## **8.2 Effect of Future Land Use Plans on Institutional Controls**

Though plans are being developed by HANO for the demolition of the Press Park housing units on OU2 and by the U.S. Army Corps of Engineers for use of a portion of OU1 for the Phase IV Florida Canal expansion project, no other information involving potential future land use change within the site have been identified that would require an adjustment to the ICs currently put into place.

## **8.3 Plans for Changes to Site Contamination Status**

No changes to the status of the contamination at the site are anticipated.

## **9.0 Issues**

Based on the data review, site inspection, interviews, and technical assessment, the implemented remedy is functioning as intended by the decision documents. No issues have been identified during this Five Year Review.

## **10.0 Recommendations and Follow-up Actions**

None.

## **11.0 Protectiveness Statement**

The time-critical and non-time critical removal actions performed at the ASL site are considered protective of human health and the environment because contaminated soil has been removed or contained and is protected from erosion, and a barrier has been constructed to prevent exposure to the remaining impacted soil. The soil barrier covering the site is in place and expected to remain intact, restricting exposure to remaining subsurface contamination. The EPA and the City of New Orleans have signed a Consent Decree that is addressing the issues and recommendations identified in the Second Five Year Review Report with an update provided in this report. Because the completed response actions for the ASL site currently prevent exposure to remaining site contamination, the remedy is considered protective of human health and the environment in the short-term and long-term—given that the remedy has been effective for over eleven years, The remedy will continue to be protective if the recommendations and follow-up actions identified in the five-year review continue.

## **12.0 Next Review**

Since waste still remains in the subsurface soils of the site, a fourth five-year review is recommended for this site. The fourth five-year review should be completed during or before September 2018.

[This page intentionally left blank]

[This page intentionally left blank]

# Tables

[This page intentionally left blank]



TABLE 1  
Chronology of Site Events  
Agriculture Street Landfill Superfund Site  
Orleans Parish, New Orleans, Louisiana

Date	Event
1909	Operation of the site as a landfill began.
1948	Dump/landfill was converted to use as a sanitary landfill.
1958	The landfill was closed.
1965	The landfill was reopened as an open burning and disposal area for debris created by Hurricane Betsy.
1977 to 1986	The northern portion (approximately 47 acres) of the site was re-developed to support housing (390 properties are on the site of the old landfill), small businesses and the Moton Elementary school.
1985	Moton Elementary School constructed.
1986	The United States Environmental Protection Agency (EPA) completed a site investigation. Under the 1982 Hazard Ranking System, the site did not qualify for placement on the National Priorities List (NPL).
1993	The Louisiana Office of Public Health and Agency for Toxic Substances and Disease Registry established a community assistance panel for citizens living near the Site.
September 1993	EPA (at the request of area community leaders) initiated an Expanded Site Investigation.
March 1994	EPA initiated a time-critical removal action consisting of installation of an 8-foot high fence around the undeveloped portion of the former landfill.
April 1994	EPA opened an outreach office at the site to involve the community at every level of the Superfund technical and administrative process.
April-June 1994	EPA conducted the Remedial/Removal Integrated Investigation (RRII) of the entire site.
August 1994	The site was proposed for inclusion on the NPL as part of NPL update No. 17.
September 1994	A Technical Assistance Grant (TAG) was awarded by EPA.
December 1994	EPA placed the site on the NPL.
February 1995	EPA conducted a second time-critical removal action to address elevated lead found on the Press Park Community Center property and performed air and ground water sampling.
March 1995	EPA completed the RRII.
March 1996	EPA officials met with site residents to discuss site issues, alternatives, and community concerns.
April 1996	The community and TAG advisor were provided with copies of the draft proposed Plan of Action and draft Engineer Evaluation/Cost Analysis (EE/CA) Report for comments and input.
1996	EPA completed a third time-critical removal action to repair the fence around the undeveloped property (Operable Unit [OU1]).
August 1996	The EE/CA report completed.
February 1997	The Proposed Plan of Action was formally released.

Date	Event
September 1997	EPA entered into an interagency agreement with the United States Army Corps of Engineers (USACE) to conduct the soil removal action.
September 1997	Action Memorandum for a non-time-critical removal action for OU 1, OU2, and OU3 is completed.
September 1997	Record of Decision (ROD) for OU 4 and OU 5 signed.
1998 – 2000	Non-Time Critical Removal Action for OU1, OU2, and OU3 performed.
June 2000	Final Removal Close Out Report submitted.
June 2000	OU4 and OU5 removed from NPL.
August 2000 – April 2001	Phase II Non-Time Critical Removal action for OU 1, OU 2, and OU 3 performed.
April 27, 2001	Final Site Inspection performed.
October 12,2001	Proposed Plan of Action for OU 1, OU 2, and OU 3 (No Further Action) completed.
April 2002	ROD for OU1, OU2 and OU 3 signed.
April 2002	Final Close Out Report and construction completion achieved.
June 2003	First Five-Year Review completed.
August 2004	EPA Publishes Notice of Intent to Delete Site from the NPL, and issue a fact sheet on the process.
September 16, 2004	Comment Period Extended on Proposed Site Deletion.
October 25, 2004	Comment Period on Proposed Site Deletion concludes.
August 29, 2005	Hurricane Katrina makes landfall in southeast Louisiana.
September 24, 2005	Hurricane Rita makes landfall near the Louisiana/Texas border.
October 1-2, 2005	EPA collected 74 soil samples at 23 locations at the site.
February 3, 2006	The EPA published a Hurricane Katrina Evaluation Report documenting an evaluation of the effects of Hurricane Katrina at the Agriculture Street Landfill Superfund Site.
August 29, 2006	The U.S. Department of Health and Human Services prepared a Health Consultation in response to hurricane sampling assessment for the Agriculture Street Landfill.
April 2008	Second Five-Year Review complete and Information Bulletin sent to residents.
May 28, 2008	Consent Decree (Civil Action No. 02-3618, Section “E”, Magistrate 3) lodged.
May 2009	City of New Orleans provides update on compliance with the Consent Decree
August 2011 - Present	City of New Orleans performs semi-annual mowing of right of ways on OU1, maintenance of the OU1 fence, maintains membership to LAONE Call, and works with Service Providers to ensure Excavation procedures are part of their Standard Operating procedures. LDEQ continues to perform semi-annual inspections.

Date	Event
August 2011 - Present	The Housing Authority of New Orleans (HANO) maintains the vegetation on their property on a regular basis. Properties are fenced and secured to minimize trespassing.
August 29, 2012	Hurricane Isaac hits southern Louisiana
April 2013	HANO issues public notice on Environmental Assessment for the Press Park HANO owned properties Demolition Project.
August 16, 2013	Memorandum of Understanding between the Department of Homeland Security/Federal Emergency Management Agency (DHS/FEMA); the EPA the Housing Authority of New Orleans (HANO); and the City of New Orleans (CNO) involving the demolition of the Press Park units is in concurrence

[This page intentionally left blank]

TABLE 2

Actions Taken Since Second Five-Year Review Agriculture Street Landfill Superfund Site Orleans Parish, New Orleans, Louisiana

Issue from Second Five-Year Review	Second Five-Year Review Recommendations/ Follow-up Actions	Party Responsible	Action Taken	Date of Action
<p>Operable Unit (OU) 1 was being used as a dumpsite for construction debris. Vegetation across this property was overgrown, limiting the ability to directly observe the condition of the soil cover. Also, gates were not secured. Although access restrictions at OU1 are not a requirement of the remedy, damage to the soil cover could result from unrestricted vehicular traffic which could potential expose the geotextile fabric and underlying contaminated soils. As long as the 12-inch thick surface soil cover and geotextile barrier remain intact and undamaged, there is minimal risk of exposure to subsurface contaminated soils.</p>	<p>The EPA and the City of New Orleans have agreed to terms on a Consent Decree (CD) to address the maintenance issues at OU1. The CD was signed by both EPA and the City of New Orleans, and lodged in the District Court on May 28, 2008. Though Hurricanes Katrina and Rita hampered the work stipulated in the Consent Decree, in May 2009 the City of New Orleans started maintaining the vegetation and fence around OU1 in accordance with the terms of the CD. Dumping in the area is now minimized due to locked gates that are maintained by the City and the Louisiana Department of Environmental Quality</p>	<p>City of New Orleans and OU1 Property Owner</p>	<p>During the third five year review site inspection, it was noticed that multiple sections of the fence and gates had been repaired and/or replaced. Since the last 5-Year Review, locks on the gates have been replaced by both LDEQ and the city of New Orleans. Keeping secured gates have significantly reduced illegal dumping on OU1,</p>	<p>May 2009 and ongoing</p>
<p>At the conclusion of each phase of the response actions conducted at the site, Close-out Letters were provided to property owners describing the operation and maintenance activities that were recommended to protect the soil cover. During the site inspection, over grown grass was observed at several residential properties at OU2 and the Shirley Jefferson Community Center (OU3). In addition, several leaking fire hydrants and/or water mains were observed within OU2</p>	<p>The Consent Decree signed by the EPA and City of New Orleans addresses the maintenance issues observed at OU2 and OU3. With the CD lodged the city is implementing the terms of the CD and is in contact with the Housing Authority of New Orleans (HANO), to maintain their Press Park units that are part of OU2.</p>	<p>City of New Orleans and HANO</p>	<p>During the third five year review site inspection, no leaking fire hydrants were observed, and vegetation on the majority of the OUs was well maintained. As part of the recovery effort from Hurricanes Katrina and Rita, HANO has installed a fence around the Press Park units that they manage and gates are secured with locks. Though the right of ways on OU1 is maintained, the core portion of this area still needs to be mowed. The city is continuing its pursuit to locate the property owner.</p>	<p>May 2009 and ongoing</p>

Issue from Second Five- Year Review	Second Five-Year Review Recommendations/	Party Responsible	Action Taken	Date of Action
Institutional Controls (ICs) providing notice of site conditions and maintenance instructions for the property are needed for future property owners.	Measures should be adopted to remind the property owner of OU1, where rutting was observed, to maintain the cover. Instructions and specifications for maintenance should be included in the reminder.	LDEQ and the City of New Orleans	LDEQ placed conveyance notices on the 9 residential properties that elected not to participate in the removal actions in December 2006. The City of New Orleans is working with the utility companies to place annual notices on bills concerning the maintenance of the vegetation, and locations to take soils that are excavated below the permeable soil barrier, for proper disposal. The city is also a member of LAOne. This ensures that contractors and utility companies that excavate in the area, notifies the city first. Homes have been sold in the community and new home owners are being informed that their property was remediated by EPA. Nonetheless, the city is pursuing additional measures to ensure notifications to existing and future property owners are maintained.	Dec. 2006; and May 2009 and ongoing
There are currently no procedures in place for the handling and disposal of soil excavated from below the geotextile barrier in the event that the material cannot be returned to the excavated area below the barrier.	The Consent Decree signed by the EPA and City of New Orleans requires that the City of New Orleans implement additional ICs that stipulate the requirements for handling and disposal of soil excavated from below the geotextile barrier at the ASL site.	EPA and the City of New Orleans	Excavation protocols have been undated with the City of New Orleans being the point of contact for locations to use for proper disposal of excess soil from excavations below the geotextile marker.	March2008 and ongoing

**Figure**

[This page intentionally left blank.]





- OU1 Undeveloped
- OU2 Residential Properties
- OU3 Shirley Jefferson Community Center
- OU4 Moton Elementary School

Note: Reproduced from CH2M HILL, 2005



FIGURE 1

Agriculture St. Landfill  
Site Map  
February, 2013  
New Orleans, Louisiana

[This page intentionally left blank.]

## **Attachment 1**

### **Documents Reviewed**

[This page intentionally left blank]



## Attachment 1

### Documents Reviewed

- City of New Orleans, Law Department (CNOLD), 2008. *Agriculture Street Landfill Superfund Site, United States v. City of New Orleans, et al. Consent Decree*. January, 24 2008.
- U. S. Department Of Health And Human Services (DHHS), 2006. *Health Consultation, Hurricane Response Sampling Assessment for the Agriculture Street Landfill*. August, 2006
- U. S. Environmental Protection Agency (EPA), 1997c. *Record of Decision, Agriculture Street Landfill Superfund Site Operable Unit 4 and Operable Unit 5*. September 2, 1997.
- U. S. Environmental Protection Agency (EPA), 2000. *Final Removal Close Out Report Agriculture Street Landfill Superfund Site*. June 2000.
- U. S. Environmental Protection Agency (EPA), 2001. *Comprehensive Five-Year Review Guidance*. OSWER No. 9355.7-03B-P. June 2001.
- U. S. Environmental Protection Agency (EPA), 2002a. *Record of Decision, Agriculture Street Landfill Superfund Site Operable Unit 1, Operable Unit 2, Operable Unit 3*. April 2002.
- U. S. Environmental Protection Agency (EPA), 2002b. *Final Close Out Report Agriculture Street Landfill Superfund Site, New Orleans, Louisiana*. April 2002.
- U. S. Environmental Protection Agency (EPA), 2003. *First Five-Year Review Report for Agriculture Street Landfill Superfund Site New Orleans, Orleans Parish, Louisiana*. June, 2003.
- U. S. Environmental Protection Agency (EPA), 2005. *Institutional Controls: A Citizens Guide to Understanding Institutional Controls at Superfund, Brownfields, Federal Facilities, Underground Storage Tank, and Resource Conservation and Recovery Act Cleanups*. EPA-540- R-04-003. February 2005.
- U. S. Environmental Protection Agency (EPA), 2006. *Hurricane Katrina Evaluation Report, Agriculture Street Landfill Superfund Site New Orleans, Orleans Parish, Louisiana*. February, 2006.
- U. S. Environmental Protection Agency (EPA), 2007a. *Responses to 2005 Hurricanes, Summary of Testing at Superfund National Priority List Sites*. [Online]. Available: <<http://www.epa.gov/katrina/superfund-summary.html#Agriculture>>. 2007.
- U. S. Environmental Protection Agency (EPA), 2007b. *Agriculture Street Landfill Superfund Site Selection of Remedy Fact Sheet*. November, 2007.
- U. S. Environmental Protection Agency (EPA), 2008. *Second Five-Year Review Report for the Agriculture Street Landfill Superfund Site New Orleans, Orleans Parish, Louisiana*. April 2008.
- U. S. Army Corps of Engineers (Corps), 2013. *SELA 26 - Florida Avenue Canal Drainage Project - Phase IV*. February 2013.
- Federal Emergency Management Agency (FEMA), 2013. *Scoping Notification/Solicitation of Views on Housing Authority of New Orleans (HANO) Press Park Residential Development and Community Center Demolition*. March 2013.

[This page intentionally left blank.]

## **Attachment 2**

### **Interview Record Forms**

[This page intentionally left blank.]



<b>Five-Year Review Interview Record</b> Agriculture Street Landfill Superfund Site New Orleans, Orleans Parish, Louisiana		Interviewee: (b) (6) Affiliation: Local Resident Telephone: (b) (6) Email address: r (b) (6)	
<b>Site Name</b>	<b>EPA ID Number</b>	<b>Date of Interview</b>	<b>Interview Method</b>
Agriculture Street Landfill Superfund Site	EPA ID# LAD981056997	1.31.2013	Face to Face
<b>Interview Contacts</b>			
<b>Name</b>	<b>Organization</b>	<b>Phone</b>	<b>Email</b>
Ursula Lennox	EPA Region 6	214-665-6743	<a href="mailto:lennox.ursula@epa.gov">lennox.ursula@epa.gov</a>
Janetta Coats	EPA Region 6	214-665-7308	<a href="mailto:coats.janetta@epa.gov">coats.janetta@epa.gov</a>
<b>Purpose of the Five-Year Review</b>			
The purpose of the five-year review is to evaluate the implementation and performance of the remedy, and to confirm that human health and the environment continue to be protected by the actions performed. This interview is being conducted as a part of the third five-year review for the Agriculture Street Landfill site. The period covered by this five-year review is from completion of the second five-year review (April 25, 2008) to the present.			
<b>Interview Questions</b>			
1. What is your overall impression of the site since the second five-year review (April 2008)?  Response: Considering what all has taken place in our community the Gordon Plaza homes look pretty good compared to other neighborhoods. A lot of the areas are over grown with trees and weeds and abandoned cars. Illegal dumping continues to be a concern. Although there seems to not be a lot of crime in the immediate community. The community is somewhat quite and we look out for each other.			
2. From your perspective, are you aware of any ongoing community concerns regarding the remedial actions EPA implemented at the site?  Response: None. Cox Cable continues to deny residents service in the Gordon Plaza Community. The residence has been denied participation in the Road Home Program for elevating their homes. The residents were told that Superfund Sites does not qualify for the Program.			
3. Have you experienced a lack in service from service providers, such as Cox Cable, Bell South, and others, since the completion of the remedial action or Hurricane Katrina? If so, please describe the basis that was provided by the company (and the name of the company) for not providing service.  Response: Home Grant Mitigation Program (HGMP). Residence has been redlined because of the Superfund Site. HGMP grants cannot be given to the Gordon Plaza residents because of being located on a superfund site. It is unfortunate that some residents were able to get funds and some were not.			

4. Prior to and after Hurricane Katrina, have you felt well-informed about the site's status?

Response: Yes

5. Do you have any comments, suggestions, or recommendations regarding the site or additional outreach efforts EPA should consider?

Response: We have no issues with EPA. EPA has made the community safer as it relates to a safer environment to live in. The remediation has given the residents a peace of mind. EPA did a great job when they were out in the community.

<b>Five-Year Review Interview Record</b> Agriculture Street Landfill Superfund Site New Orleans, Orleans Parish, Louisiana		<b>Interviewee:</b> (b) (6) <b>Affiliation:</b> Local Resident <b>Telephone:</b> (b) (6) <b>Email address:</b>		
Site Name	EPA ID Number	Date of Interview	Interview Method	
Agriculture Street Landfill Superfund Site	EPA ID# LAD981056997	1.29.2013	Face to Face	
<b>Interview Contacts</b>				
Name	Organization	Phone	Email	Address
Ursula Lennox	EPA Region 6	214-665-6743	<a href="mailto:lennox.ursula@epa.gov">lennox.ursula@epa.gov</a>	1445 Ross Ave, (6SF-RL) Dallas, Texas 75202
Janetta Coats	EPA Region 6	214-665-7308	<a href="mailto:coats.janetta@epa.gov">coats.janetta@epa.gov</a>	1445 Ross Ave, (6SF-VO) Dallas, Texas 75202
<b>Purpose of the Five-Year Review</b>				
The purpose of the five-year review is to evaluate the implementation and performance of the remedy, and to confirm that human health and the environment continue to be protected by the actions performed. This interview is being conducted as a part of the third five-year review for the Agriculture Street Landfill site. The period covered by this five-year review is from completion of the second five-year review (April 25, 2008) to the present.				
<b>Interview Questions</b>				
1. What is your overall impression of the site since the second five-year review (April 2008)?  Response: Better				
2. From your perspective, are you aware of any ongoing community concerns regarding the remedial actions EPA implemented at the site?  Response: Some talk about the site. Most of the residents talk about the legal issues and law suit at the site. EPA Response: EPA Is not involved with the legal suit filed by the residents.				

3. Have you experienced a lack in service from service providers, such as Cox Cable, Bell South, and others, since the completion of the remedial action or Hurricane Katrina? If so, please describe the basis that was provided by the company (and the name of the company) for not providing service.

Response: The cable services continue to be an issue since Hurricane Katrina.

4. Prior to and after Hurricane Katrina, have you felt well-informed about the site's status?

Response: Yes

5. Do you have any comments, suggestions, or recommendations regarding the site or additional outreach efforts EPA should consider?

Response: None

<b>Five-Year Review Interview Record</b> Agriculture Street Landfill Superfund Site New Orleans, Orleans Parish, Louisiana		<b>Interviewee:</b> Edwin Akujobi <b>Affiliation:</b> LDEQ <b>Telephone:</b> 225-219-3686 <b>Email address:</b> edwin.akujobi@la.gov		
Site Name	EPA ID Number	Date of Interview	Interview Method	
Agriculture Street Landfill Superfund Site	EPA ID# LAD981056997	1.30.2013	Face to Face	
<b>Interview Contacts</b>				
Name	Organization	Phone	Email	Address
Ursula Lennox	EPA Region 6	214-665-6743	<a href="mailto:lennox.ursula@epa.gov">lennox.ursula@epa.gov</a>	1445 Ross Ave, (6SF-RL) Dallas, Texas 75202
Janetta Coats	EPA Region 6	214-665-7308	<a href="mailto:coats.janetta@epa.gov">coats.janetta@epa.gov</a>	1445 Ross Ave, (6SF-VO) Dallas, Texas 75202
<b>Purpose of the Five-Year Review</b>				
<p>The purpose of the five-year review is to evaluate the implementation and performance of the remedy, and to confirm that human health and the environment continue to be protected by the actions performed. This interview is being conducted as a part of the third five-year review for the Agriculture Street Landfill site. The period covered by this five-year review is from completion of the second five-year review (April 25, 2008) to the present.</p>				
<b>Interview Questions</b>				
<p>1. What is your overall impression of the activities performed at the site since the second five-year review (April 25, 2008)?</p> <p>Response: On-going site inspections and fence repairs completed to satisfaction. Ground surface OU2 and OU3. Keep up by HANO fenced around. There was no indication of trespassing. It appears that OU2 &amp; OU3 is being taken care of. At one point OU1 gate was open and appeared to be used by locals to dump trash.</p>				

2. Have there been routine communications or activities (site visits, inspections of the permeable cap, reporting activities, sampling, etc.) conducted by your office regarding the site? Please describe purpose, dates, and results.

Response: Semi Annual Inspections. Has not had the opportunity to speak with the City of New Orleans. All issues have always been addressed. Consent Decree available. Utility company has been contacted for electrical services.

3. Have there been any complaints, violations, or other incidents related to the site that required a response by your office? If so, please summarize the events and results.

Response: No. There have not been any calls received about complaints.

4. Has the State implemented any institutional controls measures on the nine residential properties that elected not to participate in EPA's response action? If so, what are the controls (i.e. deed conveyance, notice, etc.), and when were they implemented? Were any other controls put in place?

Response: No. A notice has been included on the nine residential properties that chose not to participate in the voluntary removal efforts. LDEQ will check to make sure no additional information is needed or exist.

5. Do you have any comments, suggestions, or recommendations regarding the site or its administration?

Response: LDEQ would like to know the expiration of the 5 Year Reviews being required.

**EPA Response:** Because of the waste remains in the subsurface soils on the site EPA will continue 5-Year Reviews

<b>Five-Year Review Interview Record</b> Agriculture Street Landfill Superfund Site New Orleans, Orleans Parish, Louisiana		<b>Interviewee: Charles Allen III</b> <b>Affiliation: Advisor and Director,</b> <b>Coastal and Environmental Affairs</b> <b>Telephone: 504-658-4074</b> <b>Email address: "Charles E. Allen III" &lt;ceallen@nola.gov&gt;</b>		
Site Name	EPA ID Number	Date of Interview	Interview Method	
Agriculture Street Landfill Superfund Site	EPA ID# LAD981056997	1.30.2013	Face to Face	
<b>Interview Contacts</b>				
Name	Organization	Phone	Email	Address
Ursula Lennox	EPA Region 6	214-665-6743	<a href="mailto:lennox.ursula@epa.gov">lennox.ursula@epa.gov</a>	1445 Ross Ave, (6SF-RL) Dallas, Texas 75202
Janetta Coats	EPA Region 6	214-665-7308	<a href="mailto:coats.janetta@epa.gov">coats.janetta@epa.gov</a>	1445 Ross Ave, (6SF-VO) Dallas, Texas 75202
<b>Purpose of the Five-Year Review</b>				
<p>The purpose of the five-year review is to evaluate the implementation and performance of the remedy, and to confirm that human health and the environment continue to be protected by the actions performed. This interview is being conducted as a part of the third five-year review for the Agriculture Street Landfill site. The period covered by this five-year review is from completion of the second five-year review (April 25, 2008) to the present.</p>				
<b>Interview Questions</b>				
<p>1. What is your overall impression of the site since the second five-year review (April 25, 2008)?</p> <p>Response: Since, I didn't take part in the previous review; my comments will cover the period of June 2010 to the present. And, my impression of the site which is the undeveloped property bounded by Higgins Blvd (north), the above-grade railroad rights-of-way on the south and west, and the cul-de-sac at the southern end of Clouet Street, near the railroad tracks, to Higgins Blvd between Press and Montegut Streets on the east. And, it is that it is one that should be redeveloped for some good public benefit. After some years of our city's government mowing the grass and maintaining the fence around the undeveloped land, I believe it is definitely time for us to explore a myriad safe and permissible reuse options. And, as our local government comes up with any redevelopment options, we will definitely share those options and ideas with the Superfund Office of EPA Region 6.</p>				



2. Have there been routine communications or activities (site visits, inspections, reporting activities, sampling, etc.) conducted by your office regarding the site? Please describe purpose and results.

Response: My office routinely inspects the fenced undeveloped area for any illegal dumping and possible breaches to the fence surrounding the property. On an approximate quarterly basis, I have been in communication with Ms. Ursula Lennox regarding the undeveloped property. Recently, I was in communication with Ms. Lennox to discuss possible reuse and redevelopment options for the property.

3. What measures has the city taken, to be or stay in compliance with the Consent Decree (Civil Action No. 02-3618, Section "E", Magistrate 3 - i.e. fence repair and mowing on OU1, institutional control that inform new or existing residents, owners or parties excavating in the area of the measures required to maintain the integrity of the permeable cap, etc.)

Response: In the late spring and early summer of 2012, the city undertook the process of repairing the fence surrounding the undeveloped property. During that period, we informed EPA about (through Ms. Ursula Lennox) our work from the beginning to completion of the work. With the assistance of the city's Office of Neighborhood Engagement, we informed residents of the surrounding community of our fence repair work. We also still utilize a local contractor to mow the grass of the undeveloped property on at least a quarterly basis.

4. Should any portion of the site be developed or redeveloped (i.e. the undeveloped property – Operable Unit 1), does the city have measures in place that would notify EPA of the proposed development?

Response: The city's Office of Coastal and Environmental Affairs will directly contact Ms. Lennox and/or Ms. Coats regarding any possible redevelopment ideas/plans for this site in order to ensure that EPA is properly informed on this matter.

5. Have there been any complaints, violations, or other incidents related to the site that required a response by your office? If so, please summarize the events and results.

Response: As previously stated, the city had to undertake the work of repairing the fence surrounding the undeveloped property after vandals broke the chain link fence in various areas. The city repaired the fence, cleaned up the surrounding area of debris and mowed the vegetation per the consent decree.

6. What measures does the city have in place to ensure services providers, such as Cox Cable, Bell South, and others, provide existing or new services to site residents?

Response: The city will contact the various service providers to make sure the providers know that the residents of this particular area can have such services provided to them. We will follow up with the EPA Region 6 Superfund Office in order to report on the feedback of the service providers.

7. Do you have any comments, suggestions, or recommendations regarding the site or its administration?

Response: There are no other comments at this time relative to the site. I simply want to state for the record that it has indeed been a pleasure working with Ms. Ursula Lennox and Ms. Janetta Coats at the EPA Region 6 Office.



<b>Five-Year Review Interview Record</b> Agriculture Street Landfill Superfund Site New Orleans, Orleans Parish, Louisiana		Interviewee: Robert Barbour Affiliation: General Counsel – Housing Authority of New Orleans (HANO) Telephone: 504.670.3388 Email address: rbarbor@hano.org		
<b>Site Name</b>	<b>EPA ID Number</b>	<b>Date of Interview</b>	<b>Interview Method</b>	
Agriculture Street Landfill Superfund Site	EPA ID# LAD981056997	1.31.2013	Face to Face/Group	
<b>Interview Contacts</b>				
<b>Name</b>	<b>Organization</b>	<b>Phone</b>	<b>Email</b>	<b>Address</b>
Ursula Lennox	EPA Region 6	214-665-6743	<a href="mailto:lennox.ursula@epa.gov">lennox.ursula@epa.gov</a>	1445 Ross Ave, (6SF-RL) Dallas, Texas 75202
Janetta Coats	EPA Region 6	214-665-7308	<a href="mailto:coats.janetta@epa.gov">coats.janetta@epa.gov</a>	1445 Ross Ave, (6SF-VO) Dallas, Texas 75202
<b>Purpose of the Five-Year Review</b>				
<p>The purpose of the five-year review is to evaluate the implementation and performance of the remedy, and to confirm that human health and the environment continue to be protected by the actions performed. This interview is being conducted as a part of the third five-year review for the Agriculture Street Landfill site. The period covered by this five-year review is from completion of the second five-year review (April 25, 2008) to the present.</p>				
<b>Interview Questions</b>				
<p>1. What is your overall impression of the site since the second five-year review (April 25, 2008)?</p> <p>Response: There has been minimal activity at the site since the last Five-Year Review. August 29, 2012 the City of New Orleans was impacted by Hurricane Isaac. There was no significant damage to the property or the security fencing. The Louisiana Department of Environmental Quality did inspect the property on September 5, 2012.</p>				
<p>2. Are you aware of any community concerns regarding the remedial actions EPA implemented at the site?</p> <p>Response: The class action litigation regarding the Agricultural Street Landfill is still ongoing. Members of the class assert physical and mental impacts from living on or near the landfill. We are not aware of any community concerns since Hurricane Isaac regarding the remedial action implemented by EPA.</p>				

3. Have there been routine communications or activities (site visits, inspections, reporting activities, sampling, etc.) conducted by your office regarding the site? Please describe purpose and results.

Response: The Housing Authority continues to do routine maintenance on the property, including mowing and repairs as needed to fencing. In addition, the HANO Police Department continues to do routine patrols of the area and when and if they find problems with the site or the security they notify HANO's Asset Management Department to conduct the necessary repairs. HANO has not performed environmental testing at the site. HANO has conducted asbestos testing of units at Press Park in anticipation of the demolition of the site. The remediation, if any, will be done at the time of demolition.

4. What plans do HANO have in place to address the abandoned Press Park structures? Are provisions in place to consult EPA prior to and during the implementation of planned activities? If not, when will provisions be established?

Response: HANO is in negotiations with FEMA and EPA regarding an MOU for the demolition to the slab of the HANO owned properties at Press Park. Currently there is no plan in place for the demolition of the non-HANO owned properties due to the class action litigation. HANO will insure that EPA is consulted prior to any demolition activity on the site. HANO's demolition plan will be a part of the MOU.

5. What types of institutional controls are in place or will be established to restrict access to abandoned buildings and the property?

Response: At this time HANO's damaged properties are surrounded by a secured fence. The HANO Police Department also conducts regular patrols of the area.

6. Will the HANO property be redeveloped, and if so when, and within what timeframe?

Response: At this time HANO is still considering options for redevelopment or transfer of the Press Park site.

7. Do you have any comments, suggestions, or recommendations regarding the site or its administration?

Response: HANO will continue to work with FEMA and EPA to complete the MOU and the demolition of the HANO owned properties. HANO anticipates further discussions and consultation with FEMA, EPA, and other federal agencies regarding this site.

## **Attachment 3**

### **Site Inspection Checklist**

[This page intentionally left blank.]

# Agriculture Street Landfill, New Orleans, Orleans Parish, Louisiana Five-Year Review Site Inspection Checklist

Please note that "O&M" is referred to throughout this checklist. At sites where Long-Term Response Actions are in progress, O&M activities may be referred to as "system operations" since these sites are not considered to be in the O&M phase while being remediated under the Superfund program. N/A means -"not applicable".

I. SITE INFORMATION	
Site Name: Agriculture Street Landfill Superfund Site	EPA ID: LAD981056997
City/State: New Orleans, Orleans Parish, Louisiana	Date of Inspection: 01/30 /2013
Agency Completing 5 Year Review: EPA	Weather/temperature: Overcast, cloudy, low 70s
Remedy Includes: (Check all that apply) <input checked="" type="checkbox"/> Landfill cover/containment <input type="checkbox"/> Access controls <input type="checkbox"/> Institutional controls <input type="checkbox"/> Groundwater pump and treatment <input type="checkbox"/> Surface water collection and treatment <input type="checkbox"/> Other:	
Attachments: <input checked="" type="checkbox"/> Inspection team roster attached <input checked="" type="checkbox"/> Site map attached	
II. INTERVIEWS (Check all that apply)	
1. O&M site manager: Name: Title: Date: Interviewed: <input type="checkbox"/> at site <input type="checkbox"/> at office <input type="checkbox"/> by phone                      Phone Number: <u>Problems, suggestions:</u> <input type="checkbox"/> Additional report attached (if additional space required).	
2. O&M staff: Name: Title: Date: Interviewed: <input type="checkbox"/> at site <input type="checkbox"/> at office <input type="checkbox"/> by phone                      Phone Number: <u>Problems, suggestions:</u> <input type="checkbox"/> Additional report attached (if additional space required).	

3. **Local regulatory authorities and response agencies** (i.e., State and Tribal offices, emergency response office, police department, office of public health or environmental health, zoning office, recorder of deeds, or other city and county offices, etc.) Fill in all that apply.

**Agency:** Louisiana Department of Environmental Quality

**Contact:**

Name: Edwin Akujobi

Title: Environmental Scientist/Supervisor

Date:

Phone Number: 225-219-3686

Problems, suggestions: ☐ Additional report attached (if additional space required).

**Agency:**

**Contact:**

Name:

Title:

Phone Number:

Problems, suggestions: ☐ Additional report attached (if additional space required).

**Agency:**

**Contact:**

Name:

Title:

Date:

Phone Number:

Problems, suggestions: ☐ Additional report attached (if additional space required).

**Agency:**

**Contact:**

Name:

Title:

Date:

Phone Number:

Problems, suggestions: ☐ Additional report attached (if additional space required).

4. **Other interviews (optional)** ☐ N/A ☐ Additional report attached (if additional space required).

### III. ONSITE DOCUMENTS & RECORDS VERIFIED (Check all that apply)

1. **O&M Documents**

☐ O&M Manuals

☐ Readily available

☐ Up to date

☒ N/A

☐ As-Built Drawings

☐ Readily available

☐ Up to date

☒ N/A

☐ Maintenance Logs

☐ Readily available

☐ Up to date

☒ N/A

Remarks:

<p>2. <b>Health and Safety Plan Documents</b>  <input type="checkbox"/> Site-Specific Health and Safety Plan  <input type="checkbox"/> Contingency plan/emergency response plan  <u>Remarks:</u></p>	<p><input type="checkbox"/> Readily available  <input type="checkbox"/> Readily available</p>	<p><input type="checkbox"/> Up to date  <input type="checkbox"/> Up to date</p>	<p><input checked="" type="checkbox"/> N/A  <input checked="" type="checkbox"/> N/A</p>
<p>3. <b>O&amp;M and OSHA Training Records</b>  <u>Remarks:</u></p>	<p><input type="checkbox"/> Readily available</p>	<p><input type="checkbox"/> Up to date</p>	<p><input checked="" type="checkbox"/> N/A</p>
<p>4. <b>Permits and Service Agreements</b>  <input type="checkbox"/> Air discharge permit  <input type="checkbox"/> Effluent discharge  <input type="checkbox"/> Waste disposal, POTW  <input type="checkbox"/> Other permits  <u>Remarks:</u></p>	<p><input type="checkbox"/> Readily available  <input type="checkbox"/> Readily available  <input type="checkbox"/> Readily available  <input type="checkbox"/> Readily available</p>	<p><input type="checkbox"/> Up to date  <input type="checkbox"/> Up to date  <input type="checkbox"/> Up to date  <input type="checkbox"/> Up to date</p>	<p><input checked="" type="checkbox"/> N/A  <input checked="" type="checkbox"/> N/A  <input checked="" type="checkbox"/> N/A  <input checked="" type="checkbox"/> N/A</p>
<p>5. <b>Gas Generation Records</b>  <u>Remarks:</u></p>	<p><input type="checkbox"/> Readily available</p>	<p><input type="checkbox"/> Up to date</p>	<p><input checked="" type="checkbox"/> N/A</p>
<p>6. <b>Settlement Monument Records</b>  <u>Remarks:</u></p>	<p><input type="checkbox"/> Readily available</p>	<p><input type="checkbox"/> Up to date</p>	<p><input checked="" type="checkbox"/> N/A</p>
<p>7. <b>Groundwater Monitoring Records</b>  <u>Remarks:</u></p>	<p><input type="checkbox"/> Readily available</p>	<p><input type="checkbox"/> Up to date</p>	<p><input checked="" type="checkbox"/> N/A</p>
<p>8. <b>Leachate Extraction Records</b>  <u>Remarks:</u></p>	<p><input type="checkbox"/> Readily available</p>	<p><input type="checkbox"/> Up to date</p>	<p><input checked="" type="checkbox"/> N/A</p>
<p>9. <b>Discharge Compliance Records</b>  <u>Remarks:</u></p>	<p><input type="checkbox"/> Readily available</p>	<p><input type="checkbox"/> Up to date</p>	<p><input checked="" type="checkbox"/> N/A</p>

10. Daily Access/Security Logs  
Remarks:

☐ Readily available

☐ Up to date

☒ N/A

#### IV. O&M Costs

☐ Applicable

☐ N/A

##### 1. O&M Organization

☐ State in-house

☐ Contractor for State

☐ PRP in-house

☐ Contractor for PRP

☐ Other: Contractor

##### 2. O&M Cost Records

☐ Readily available

☐ Up to date

☐ Funding mechanism/agreement in place

Original O&M cost estimate:

☐ Breakdown attached

Total annual cost by year for review period if available

From (Date):

To (Date):

Total cost:

☐ Breakdown attached

From (Date):

To (Date):

Total cost:

☐ Breakdown attached

From (Date):

To (Date):

Total cost:

☐ Breakdown attached

From (Date):

To (Date):

Total cost:

☐ Breakdown attached

From (Date):

To (Date):

Total cost:

☐ Breakdown attached

Remarks:

##### 3. Unanticipated or Unusually High O&M Costs During Review Period

Describe costs and reasons:

☐ N/A

#### V. ACCESS AND INSTITUTIONAL CONTROLS ☒ Applicable ☐ N/A

##### A. Fencing

##### 1. Fencing damaged

☒ NA

☐ Location shown on site map

☐ Gates secured

Remarks: Previous breaches in the fence around OU1 have been addressed by the city of New Orleans. Gates have been replaced and secured with locks.



## B. Other Access Restrictions

1. Signs and other security measures ☐ Location shown on site map ☐ N/A  
Remarks: Several no dumping signs along the perimeter fence were observed during the site inspection.

## C. Institutional Controls

1. Implementation and enforcement  
 Site conditions imply ICs not properly implemented: ☐ Yes ☐ No ☐ N/A  
 Site conditions imply ICs not being fully enforced: ☐ Yes ☐ No ☐ N/A  
 Type of monitoring (e.g., self-reporting, drive by):  
 Frequency: Semi-annual  
 Responsible party/agency: LDEQ / City of New Orleans  
 Contact:  
 Name: Edwin Akujobi / Charles Allen III  
 Title: Supervisor /Director of Coastal and Environmental Affairs  
 Date:  
 Phone Number: 225-219-3686 / 504-658-4074  
 Reporting is up-to-date: ☐ Yes ☐ No ☐ N/A  
 Reports are verified by the lead agency: ☐ Yes ☐ No ☐ N/A  
 Specific requirements in deed or decision documents have been met: ☐ Yes ☐ No ☐ N/A  
 Violations have been reported: ☐ Yes ☐ No ☐ N/A  
 Other problems or suggestions: ☐ Additional report attached (if additional space required).

2. Adequacy ☐ ☐ ICs are inadequate ☒ ICs are adequate  
Remarks: The city of New Orleans is a member of OneCall Center. If any digging by a contractor is needed onsite, they must notify the city first, before work commences. This will ensure that the integrity of the cap is maintained. The city also works with the utility companies to confirm that the protocol for excavating in the area is part of the Standard Operating Procedures and that reminders involving vegetation maintenance are sent to the residents. Also, the State has placed notices on the 9 properties that did not participate in the removal action. HANO is also maintaining its properties and will continue to do so once the demolition of the structures on their property is complete.

## D. General

1. Vandalism/trespassing Location shown on site map No vandalism evident  
Remarks: Vandalism at the site is evident because there have been dumping activities at the OU 1. Chains and locks have been removed from the gates and some sections of the fence have been damaged. The fence is overgrown with heavy vegetation. The overall condition of the fence is poor. ☒

2. Land use changes onsite N/A  
Remarks: ☒

3. Land use changes offsite N/A  
Remarks:

## VI. GENERAL SITE CONDITIONS

- A. Roads Applicable N/A

1. Roads damaged ☐ Location shown on site map ☒ Roads adequate ☐ N/A

<u>Remarks:</u>			
<b>2. Other Site Conditions</b>			
<u>Remarks:</u> The site area in general is in good condition. The vegetation in the core interior of OU1 was not cut. However, there are no signs that indicate that the cap is compromised. This vegetation will be addressed by the city and the USACE, once the railroad project--that will use a portion of OU1--is underway.			
<b>VII. LANDFILL COVERS</b>		<input checked="" type="checkbox"/> Applicable <input type="checkbox"/> N/A	
<b>A. Landfill Surface</b>			
<b>1. Settlement (Low spots)</b> Areal extent: <u>Remarks:</u>	<input type="checkbox"/> Location shown on site map Depth:	<input checked="" type="checkbox"/> Settlement not evident	
<b>2. Cracks</b> Lengths: <u>Remarks:</u>	<input type="checkbox"/> Location shown on site map Widths:                  Depths:	<input checked="" type="checkbox"/> Cracking not evident	
<b>3. Erosion</b> Areal extent: <u>Remarks:</u> Some small areas of erosion were observed.	<input type="checkbox"/> Location shown on site map Depth:	<input checked="" type="checkbox"/> Erosion not evident	
<b>4. Holes</b> Areal extent: <u>Remarks:</u>	<input type="checkbox"/> Location shown on site map Depth:	<input checked="" type="checkbox"/> Holes not evident	
<b>5. Vegetative Cover</b> <input checked="" type="checkbox"/> Cover properly established <input type="checkbox"/> No signs of stress <input checked="" type="checkbox"/> Grass <input checked="" type="checkbox"/> Trees/Shrubs <u>Remarks:</u> A great extent of OU 1 was heavily vegetated. Medium size trees and shrubs were present at OU 1.			
<b>6. Alternative Cover (armored rock, concrete, etc.)</b> <u>Remarks:</u>			
<b>7. Bulges</b> Areal extent: <u>Remarks:</u>	<input type="checkbox"/> Location shown on site map Height:	<input checked="" type="checkbox"/> Bulges not evident	

8.	Wet Areas/Water Damage <input type="checkbox"/> Wet areas <input type="checkbox"/> Ponding <input type="checkbox"/> Seeps <input type="checkbox"/> Soft subgrade	<input checked="" type="checkbox"/> Wet areas/water damage not evident <input type="checkbox"/> Location shown on site map <input type="checkbox"/> Location shown on site map <input type="checkbox"/> Location shown on site map <input type="checkbox"/> Location shown on site map	Areal extent: Areal extent: Areal extent: Areal extent:
<u>Remarks:</u>			
9.	Slope Instability Areal extent: <u>Remarks:</u>	<input type="checkbox"/> Slides <input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> No evidence of slope instability
B. Benches                                      Applicable      N/A			
1.	Flows Bypass Bench <u>Remarks:</u>	<input type="checkbox"/> Location shown on site map	<input type="checkbox"/> N/A or okay
2.	Bench Breached <u>Remarks:</u>	<input type="checkbox"/> Location shown on site map	<input type="checkbox"/> N/A or okay
3.	Bench Overtopped <u>Remarks:</u>	<input type="checkbox"/> Location shown on site map	<input type="checkbox"/> N/A or okay
C. Letdown Channels                                      Applicable      N/A			
1.	Settlement Areal extent: <u>Remarks:</u>	<input type="checkbox"/> Location shown on site map Depth:	<input type="checkbox"/> No evidence of settlement
2.	Material Degradation Material type: <u>Remarks:</u>	<input type="checkbox"/> Location shown on site map Areal extent:	<input type="checkbox"/> No evidence of degradation
3.	Erosion Areal extent: <u>Remarks:</u>	<input type="checkbox"/> Location shown on site map Depth:	<input type="checkbox"/> No evidence of erosion

4.	Undercutting Areal extent: <u>Remarks:</u>	<input type="checkbox"/> Location shown on site map Depth:	<input type="checkbox"/> No evidence of undercutting
5.	Obstructions Type: Areal extent: <u>Remarks:</u>	<input type="checkbox"/> Location shown on site map Height:	<input type="checkbox"/> N/A
6.	Excessive Vegetative Growth <input type="checkbox"/> Evidence of excessive growth <input type="checkbox"/> Location shown on site map <u>Remarks:</u>	<input type="checkbox"/> No evidence of excessive growth <input type="checkbox"/> Vegetation in channels but does not obstruct flow Areal extent:	
D. Cover Penetrations      Applicable      N/A			
1.	Gas Vents <input type="checkbox"/> Active <input type="checkbox"/> Passive <input type="checkbox"/> Properly secured/locked <input type="checkbox"/> Evidence of leakage at penetration <u>Remarks:</u>	<input type="checkbox"/> Routinely sampled <input type="checkbox"/> Functioning <input type="checkbox"/> Needs O & M	<input type="checkbox"/> N/A <input type="checkbox"/> Good condition
2.	Gas Monitoring Probes <input type="checkbox"/> Routinely sampled <input type="checkbox"/> Properly secured/locked <input type="checkbox"/> Evidence of leakage at penetration <u>Remarks:</u>	<input type="checkbox"/> Functioning <input type="checkbox"/> Needs O&M	<input type="checkbox"/> N/A <input type="checkbox"/> Good condition
3.	Monitoring Wells (within surface area of landfill) <input type="checkbox"/> Routinely sampled <input type="checkbox"/> Properly secured/locked <input type="checkbox"/> Evidence of leakage at penetration <u>Remarks:</u>	<input type="checkbox"/> Functioning <input type="checkbox"/> Needs O&M	<input type="checkbox"/> N/A <input type="checkbox"/> Good condition
4.	Leachate Extraction Wells <input type="checkbox"/> Routinely sampled <input type="checkbox"/> Properly secured/locked <input type="checkbox"/> Evidence of leakage at penetration <u>Remarks:</u>	<input type="checkbox"/> Functioning <input type="checkbox"/> Needs O&M	<input type="checkbox"/> N/A <input type="checkbox"/> Good condition

5.	Settlement Monuments <u>Remarks:</u>	<input type="checkbox"/> Located	<input type="checkbox"/> Routinely surveyed	<input type="checkbox"/> N/A
E. Gas Collection and Treatment      Applicable      N/A				
1.	Gas Treatment Facilities <input type="checkbox"/> Flaring <input type="checkbox"/> Thermal destruction <input type="checkbox"/> Collection for reuse <input type="checkbox"/> Good condition <input type="checkbox"/> Needs O& M <u>Remarks:</u>			<input type="checkbox"/> N/A
2.	Gas Collection Wells, Manifolds and Piping <input type="checkbox"/> Good condition <input type="checkbox"/> Needs O& M <u>Remarks:</u>			<input type="checkbox"/> N/A
3.	Gas Monitoring Facilities (e.g., gas monitoring of adjacent homes or buildings) <input type="checkbox"/> Good condition <input type="checkbox"/> Needs O& M <u>Remarks:</u>			<input type="checkbox"/> N/A
F. Cover Drainage Layer      Applicable      N/A				
1.	Outlet Pipes Inspected <u>Remarks:</u>	<input type="checkbox"/> Functioning		<input type="checkbox"/> N/A
2.	Outlet Rock Inspected <u>Remarks:</u>	<input type="checkbox"/> Functioning		<input type="checkbox"/> N/A
G. Detention/Sedimentation Ponds      Applicable      N/A				
1.	Siltation Areal extent: <u>Remarks:</u>	<input type="checkbox"/> Siltation evident Depth:		<input type="checkbox"/> N/A
2.	Erosion Areal extent: <u>Remarks:</u>	<input type="checkbox"/> Erosion evident Depth:		<input type="checkbox"/> N/A
3.	Outlet Works <u>Remarks:</u>	<input type="checkbox"/> Functioning		<input type="checkbox"/> N/A

4.	Dam <u>Remarks:</u>	<input type="checkbox"/> Functioning	<input type="checkbox"/> N/A
H. Retaining Walls                      Applicable      N/A			
1.	Deformations Horizontal displacement: Vertical displacement: <u>Remarks:</u>	<input type="checkbox"/> Location shown on site map	<input type="checkbox"/> Deformation not evident Rotational displacement:
2.	Degradation <u>Remarks:</u>	<input type="checkbox"/> Location shown on site map	<input type="checkbox"/> Degradation not evident
I. Perimeter Ditches/Off-site discharge                      Applicable      N/A			
1.	Siltation Areal extent: Depth: <u>Remarks:</u>	<input type="checkbox"/> Location shown on site map	<input type="checkbox"/> Siltation not evident
2.	Vegetative Growth Areal extent: Type: <u>Remarks:</u>	<input type="checkbox"/> Location shown on site map	<input type="checkbox"/> Vegetation does not impede flow
3.	Erosion Areal extent: Depth: <u>Remarks:</u>	<input type="checkbox"/> Location shown on site map	<input type="checkbox"/> Erosion not evident
4.	Discharge Structure <input type="checkbox"/> Functioning <u>Remarks:</u>	<input type="checkbox"/> Location shown on site map <input type="checkbox"/> Good Condition	<input type="checkbox"/> N/A
<b>VIII VERTICAL BARRIER WALLS</b> <input type="checkbox"/> Applicable <input checked="" type="checkbox"/> N/A			

1.	Settlement Areal extent: Depth: Remarks:	<input type="checkbox"/> Location shown on site map <input type="checkbox"/> Settlement not evident	
2.	Performance Monitoring <input type="checkbox"/> Performance not monitored <input type="checkbox"/> Performance monitored <input type="checkbox"/> Evidence of breaching Remarks:	Frequency: Head differential:	<input type="checkbox"/> N/A
IX. GROUNDWATER/SURFACE WATER REMEDIES			
		<input type="checkbox"/> Applicable	<input checked="" type="checkbox"/> N/A
A. Groundwater Extraction Wells, Pumps, and Pipelines		Applicable	N/A
1.	Pumps, Wellhead Plumbing, and Electrical <input type="checkbox"/> All required wells located <input type="checkbox"/> Good condition Remarks:	<input type="checkbox"/> Needs O & M	<input type="checkbox"/> N/A
2.	Extraction System Pipelines, Valves, Valve Boxes, and Other Appurtenances <input type="checkbox"/> System located <input type="checkbox"/> Good condition Remarks:	<input type="checkbox"/> Needs O & M	<input type="checkbox"/> N/A
3.	Spare Parts and Equipment <input type="checkbox"/> Readily available <input type="checkbox"/> Requires Upgrade Remarks:	<input type="checkbox"/> Good condition <input type="checkbox"/> Needs to be provided	<input type="checkbox"/> N/A
B. Surface Water Collection Structures, Pumps, and Pipelines		Applicable	N/A
1.	Collection Structures, Pumps, and Electrical <input type="checkbox"/> Good condition <input type="checkbox"/> Needs O & M Remarks:		<input type="checkbox"/> N/A
2.	Surface Water Collection System Pipelines, Valves, Valve Boxes, and Other Appurtenances <input type="checkbox"/> Good condition <input type="checkbox"/> Needs O & M Remarks: Not observed.		<input type="checkbox"/> N/A
3.	Spare Parts and Equipment <input type="checkbox"/> Readily available <input type="checkbox"/> Requires Upgrade	<input type="checkbox"/> Good condition <input type="checkbox"/> Needs to be provided	<input type="checkbox"/> N/A

<u>Remarks:</u>		
C. Treatment System	Applicable	N/A
<p>1. Treatment Train (Check components that apply)</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> <input type="checkbox"/> Metals removal  <input type="checkbox"/> Air stripping  <input type="checkbox"/> Additive (list type, e.g., chelation agent, flocculent)  <input type="checkbox"/> Others (list):  <input type="checkbox"/> Good condition  <input type="checkbox"/> Sampling ports properly marked and functional  <input type="checkbox"/> Sampling/maintenance log displayed and up to date  <input type="checkbox"/> Equipment properly identified  <input type="checkbox"/> Quantity of groundwater treated annually (list volume):  <input type="checkbox"/> Quantity of surface water treated annually (list volume):  <u>Remarks:</u> </div> <div style="width: 30%;"> <input type="checkbox"/> Oil/water separation  <input type="checkbox"/> Carbon adsorbers  <input type="checkbox"/> Needs O&amp;M  </div> <div style="width: 30%;"> <input type="checkbox"/> Bioremediation  <input type="checkbox"/> Filters (list type):  </div> </div>		
<p>2. Electrical Enclosures and Panels (properly rated and functional) <input type="checkbox"/> N/A</p> <input type="checkbox"/> Good condition <input type="checkbox"/> Needs O& M <u>Remarks:</u> See Hurricane Katrina Response Technical Memorandum, February 2006		
<p>3. Tanks, Vaults, Storage Vessels <input type="checkbox"/> N/A</p> <input type="checkbox"/> Good condition <input type="checkbox"/> Proper secondary containment <input type="checkbox"/> Needs O&M <u>Remarks:</u>		
<p>4. Discharge Structure and Appurtenances <input type="checkbox"/> N/A</p> <input type="checkbox"/> Good condition <input type="checkbox"/> Needs O& M <u>Remarks:</u>		
<p>5. Treatment Building(s) <input type="checkbox"/> N/A</p> <input type="checkbox"/> Good condition (esp. roof and doorways) <input type="checkbox"/> Needs Repair <input type="checkbox"/> Chemicals and equipment properly stored <u>Remarks:</u>		



6.	Monitoring Wells (pump and treatment remedy)	<input type="checkbox"/> N/A	
	<input type="checkbox"/> All required wells located	<input type="checkbox"/> Properly secured/locked	<input type="checkbox"/> Functioning <input type="checkbox"/> Routinely sampled
	<input type="checkbox"/> Good condition	<input type="checkbox"/> Needs O&M	
	<u>Remarks:</u>		
D. Monitoring Data			
	Applicable	N/A	
1.	Monitoring Data	<input type="checkbox"/> N/A	
	<input type="checkbox"/> Is routinely submitted on time	<input type="checkbox"/> Is of acceptable quality	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.	Monitoring data suggests:		
	<input type="checkbox"/> Groundwater plume is effectively contained	<input type="checkbox"/> Contaminant concentrations are declining	
E. Monitored Natural Attenuation			
	Applicable	N/A	
1.	Monitoring Wells (natural attenuation remedy)	<input type="checkbox"/> N/A	
	<input type="checkbox"/> All required wells located	<input type="checkbox"/> Properly secured/locked	<input type="checkbox"/> Functioning <input type="checkbox"/> Routinely sampled
	<input type="checkbox"/> Good condition	<input type="checkbox"/> Needs O&M	
	<u>Remarks:</u>		
X. OTHER REMEDIES			
		__ Applicable	X N/A
If there are remedies applied at the site which are not covered above, attach an inspection sheet describing the physical nature and condition of any facility associated with the remedy. An example would be soil vapor extraction.			
XI. OVERALL OBSERVATIONS			
A. Implementation of the Remedy			
Describe issues and observations relating to whether the remedy is effective and functioning as designed. Begin with a brief statement of what the remedy is to accomplish (i.e., to contain contaminant plume, minimize infiltration and gas emission, etc.).			
<p>Based on visual inspection of the Operable Units 1, 2 and 3 where removal actions were completed, the maintenance of the cap continues to be effectively maintained by the homeowners in the Gordon Plaza subdivision; HANO - at the Press Park town homes, apartments, and community center; and the city of New Orleans – in the right of way on and around OU1.</p> <p>Illegal dumping activities still exists but is not as significant since the 2008 5-Year Review. This is due in part to the fence repairs the city of New Orleans performed around OU1, and an increased police presence in the neighborhood, especially since the Press Park units and Gordon Plaza Apartments are still abandoned from Hurricane Katrina. Also, the city has placed locks on the gates at OU1, which is hindering illegal access to the property.</p>			

**B. Adequacy of O&M**

Describe issues and observations related to the implementation and scope of O&M procedures. In particular, discuss their relationship to the current and long-term protectiveness of the remedy.

After removal action activities were conducted at OU 1, 2 and 3 all property owners where remedial action took place received instructions for routine maintenance of the surface and excavation of soil above and below the geotextile barrier. The instructions were also made available at the repositories. These instructions provided guidance for routine surface maintenance activities such as filling holes above the geotextile barrier, cultivation of vegetative cover, and excavation of soils. Each OU property owner is responsible for maintenance of the cap and vegetative cover. Sellers of homes are notifying the purchasers of the instructions for routine maintenance.

**C. Early Indicators of Potential Remedy Failure**

Describe issues and observations such as unexpected changes in the cost or scope of O&M or a high frequency of unscheduled repairs that suggest that the protectiveness of the remedy may be compromised in the future.

Based on the semi-annual inspections that are performed by the State and the 5-Year Review inspection, there continues to be no indicators of potential remedy failure. The implemented remedy shows that it can withstand floods (i.e. Hurricanes Rita, Katrina, and Ike). Previous observations from the 2<sup>nd</sup> 5-Year Review (i.e. leaking fire hydrants along Press Street), have been addressed and maintained by the Sewage and Water Board.

**D. Opportunities for Optimization**

Describe possible opportunities for optimization in monitoring tasks or the operation of the remedy.

The Housing Authority of New Orleans (HANO), in coordination with FEMA and the city of New Orleans are pursuing plans to demolish the Press Park townhomes, apartments, and community center. To ensure that the cap is properly maintained, EPA will be included and consulted on the demolition and restoration plans. Similarly, the USACE is placing a temporary rail line and road on a portion of OU1, in coordination with the city of New Orleans, LDEQ, and the Sewage and Water Board. EPA will also be included and consulted on the construction and restoration plans.

**Inspection Team Roster**

**Date of Site Inspection: January 30 – 31, 2013**

<b>Name</b>	<b>Organization</b>	<b>Title</b>
Edwin Akujobi	LDEQ	Environmental Scientist/Supervisor
Ursula Lennox	EPA	Remedial Project Manager
Janetta Coats	EPA	Community Involvement Coordinator

[This page intentionally left blank.]

## **Attachment 4**

### **Site Inspection Photographs**

[This page intentionally left blank.]



*Photo Taken 1.29.2013 Gordon Plaza Apartments Pic # 891*  
Former Gordon Plaza Apartments/Senior Citizens Residential Units



*Photo Taken 1.29.2013 Pic # 892*  
Former Gordon Plaza Apartments/Senior Citizens Residential Units





*Photo Taken 1.29.2013 Pic # 893*

Gordon Plaza Residential Homes. Photo taken corner Benefit Street and Montegut Drive



*Photo Taken 1.29.2013 Pic # 896*

Illegal Dumping continues along Industry Street and surrounding undeveloped properties





*Photo Taken 1.29.2013 Industry and Press Street near Residential Properties – Pic # 901*

Looking west along Industry Street towards the Almonaster Boulevard overpass. OU 1 is on the left in the background. The backside of Gordon Plaza Residential Homes are to your right.



*Photo Taken 1.29.2013 Illegal Dumping Pic # 910*



*Taken 1.29.2013: Undeveloped property fence line along St. Ferdinand Blvd. – Pic # 900  
(Fence and gates were repaired by the city of New Orleans)*



*Photo Taken 1.29.2013 Shirley Jefferson Community Center – Pic # 902  
Demolition efforts are being discussed with HANO, FEMA and various stakeholders*

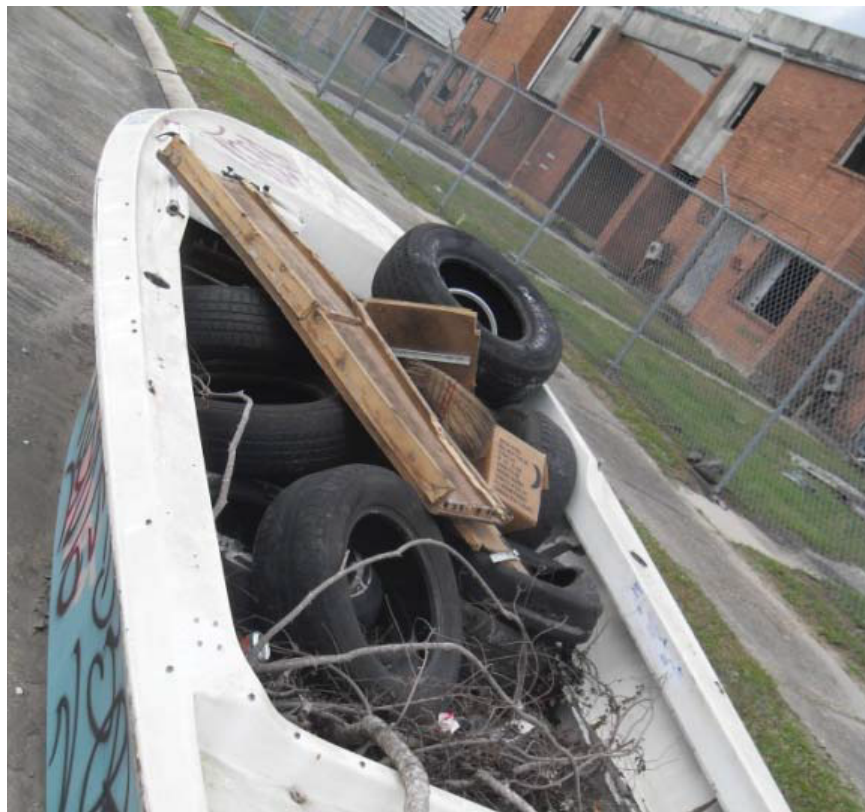




*Photo Taken 1.29.2013 View of HANO Apartments from Benefit Street and Montegut Drive – Pic # 905*  
Demolition efforts are being discussed with HANO, FEMA and various stakeholders



*Photo Taken 1.29.2013 Back view of HANO Apartments – Pic # 906*  
Demolition efforts are being discussed with HANO, FEMA and various stakeholders



*Photo Taken 1.29.2013 Illegal Dumping Pic # 907*

Demolition efforts are being discussed with HANO, FEMA and various stakeholders

## **Attachment 5**

### **Notice to the Public Regarding the Five-Year Review**

[This page intentionally left blank.]

**AGRICULTURE STREET LANDFILL  
SUPERFUND SITE PUBLIC NOTICE U.S.  
EPA Region 6 Begins  
Third Five-Year Review of Site Remedy  
January 2013**



The U.S. Environmental Protection Agency Region 6 (EPA) has begun the Third Five- Year Review of the remedy for the Agriculture Street Landfill Site. The review will evaluate the soil removal action conducted at the site to correct contamination problems and protect public health and the environment. The site is located within the eastern city limits of New Orleans, Orleans Parish, Louisiana, approximately 3 miles south of Lake Pontchartrain and three miles north-northeast of the city's central business district.

Once completed, the results of the third Five-Year Review will be made available to the public on EPA's website and the following information repository:

**Louisiana Department of Environmental Quality  
Public Records, Galvez Building, Room 127  
602 N. Fifth Street  
Baton Rouge, LA 70802  
8:00 AM to 4:30 PM, Monday-Friday  
(225) 219-3172 or e-mail [publicrecords@la.gov](mailto:publicrecords@la.gov)**

Information about the Agriculture Street Landfill Site is also available on the internet at:

<http://www.epa.gov/Region6/6sf/pdffiles/ag-street-la.pdf>.

Questions or concerns about the Agriculture Street Landfill Site should be directed to Ursula Lennox/Remedial Project Manager at (214) 665-6743 or Janetta Coats/Community Involvement Coordinator at (214) 665-7308 or 1-800-533-3508 toll-free.

**CONFIRMED PUBLICATION** in the New Orleans Times-Picayune on January 18, 2013

[This page intentionally left blank.]



**Attachment 6**  
**Excavation Instructions for Service Provides**  
**and Property Owners**

[This page intentionally left blank.]

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 6**  
**DALLAS, TEXAS**  
**AGRICULTURE STREET LANDFILL SUPERFUND SITE**  
**NEW ORLEANS, LOUISIANA**  
**TECHNICAL ABSTRACT FOR UTILITIES AND RAILROAD**

**Updated March 2013**

The remedy for subsurface contamination at the Agriculture Street Landfill Superfund Site includes a subsurface permeable geo-textile mat over contaminated material left in place. The undeveloped area is graded to provide controlled drainage. This area contains a permeable geo-textile mat that is covered with 12 inches of clean soil and a vegetative cover. The permeable geo-textile mat in the developed area is covered by 18 inches of clean soil and a vegetative cover in the right of ways and 24 inches of clean soil and a vegetative cover on the community center and residential properties. The vegetative cover is to prevent the erosion of the soil cap. This Technical Abstract provides the protocol that utilities and railroad companies identified in the table below should follow to maintain the integrity of the permeable soil and geo-textile mat implemented by the U.S. Environmental Protection Agency (EPA) on the Agriculture Street Landfill Superfund Site. With the exception of nine residential properties, an EPA response action was implemented on the Site. Based on the best available information to date, the following utilities and railroad companies provide service in and around the area.

<b>SERVICE</b>	<b>PROVIDER</b>
Telephone	Bell South
Water	Sewage & Water Board
Sewage	Sewage & Water Board
Cable TV	Cox Communications
Electric	Entergy
Gas	Entergy
Railroad	Alabama Great Southern Railroad Company d/b/a Norfolk Southern

All properties will not have all of the above mentioned utilities present. However the concerns and considerations for each Provider listed above will be the same for all properties.

---

## **UNDEVELOPED AREA - EXCAVATION BELOW ONE FOOT EXCAVATION/BACKFILL LIMITS**

In the event that a utility or railroad company finds it necessary to excavate below the limits of the geo-textile mat, the following procedures are to be followed:

- 1) The utility company or the railroad company shall contact the USEPA that excavation below and penetration of the geo-textile mat is necessary.
- 2) Soils excavated within the top 12 inches of the excavation (above the geo-textile mat) may be set aside and used as backfill in the same area.
- 3) The geo-textile is to be cut to provide access below the mat.
- 4) Soil excavated from below the mat is considered to be landfill material. Each utility company and railroad company is to determine, after consulting with a Certified Industrial Hygienist, the proper personal protective equipment required to accomplish the work.
- 5) After completion of the work, the excavated soil (that from below the mat) may be placed back into the excavation as backfill (to an elevation not to exceed the elevation of the adjacent geo-textile mat) or may be tested by the utility company and disposed of properly at a facility designated by the City of New Orleans.
- 6) After completion of the backfill below the remedy area, the geo-textile and marker is to be restored. The geo-textile is to be patched by cutting a piece of new fabric so that there is an overlap of 3 feet on all sides. The fabric used as the patch shall be of the same quality and properties as the original fabric.
- 7) The soils excavated from the top 12 inches shall be used as backfill above the geo-textile mat.

## **DEVELOPED AREA - EXCAVATION BELOW TWO FEET EXCAVATION/BACKFILL LIMITS**

In the event that a utility company finds it necessary to excavate below the limits of the geo-textile mat, the following procedures are to be followed:

- 1) The utility company shall contact the USEPA that excavation below and penetration of the geo-textile mat is necessary.
- 2) Soils excavated within the top two feet of the excavation (above the geo-textile mat) may be set aside and used as backfill in the same area.
- 3) The geo-textile is to be cut to provide access below the mat.
- 4) Soil excavated from below the mat is considered to be landfill material. Each utility company is to determine, after consulting with a Certified Industrial Hygienist, the proper personal protective equipment required to accomplish the work.
- 5) After completion of the work, the excavated soil (that from below the mat) may be placed back into the excavation as backfill (to an elevation not to exceed the elevation of the adjacent geo-textile mat) or may be tested by the utility company and disposed of properly at a facility designated by the City of New Orleans.
- 6) After completion of the backfill below the remedy area, the geo-textile and marker is to be restored. The geo-textile is to be patched by cutting a piece of new fabric so that there is an overlap of 3 feet on all sides. The fabric used as the patch shall be of the same quality and properties as the original fabric.
- 7) The soils excavated from the top two feet shall be used as backfill above the geo-textile mat.

## Instructions Provided to Property Owners

### ATTACHMENT 2

#### POST-REMOVAL MAINTENANCE

Post-closure care of the clean soil cap and vegetative cover consists of routine activities to maintain the integrity of the soil cap and vegetation on your property. Surface maintenance includes simple measures such as filling in holes above the geotextile barrier with clean soil and continued cultivation of the grass, shrubbery, trees, and other landscape features to assure a healthy vegetative cover over the clean fill.

If excavation below the geotextile fabric is required, the procedures for excavation and restoration outlined in the "Technical Abstract Utilities" paper dated July 1998 (available in the EPA Outreach Office), should be followed. In general:

- 1) Clean soils excavated within the top two feet of the excavation (above the geotextile) may be set aside and used as backfill in the same area.
- 2) The geotextile is to be cut to provide access below the barrier.
- 3) Soil excavated from below the barrier is considered to be contaminated landfill material and should be placed on a plastic sheet (away from the clean soil), to avoid contact with the surface soil. Also, proper personal protective equipment (i.e. coveralls, gloves, etc.) may be required to accomplish the work.
- 4) After completing the work, the excavated soil (from below the barrier) may be placed back into the excavation below the barrier as backfill.
- 5) After completion of the backfill below the matted area, the geotextile and marker are to be restored, and the excavation equipment cleaned.
- 6) The soils excavated from the top two feet (or clean fill from another source) can be used as backfill above the geotextile barrier. The area should be re-vegetated and maintained, to off-set the erosion of clean backfill.

T-8

## **Attachment 7 Consent Decree**

[This page intentionally left blank.]



**V.**

\_\_\_\_\_

FEBRUARY 2013

Case 2:02-cv-03618-ML-DEK Document 256 Filed 05/28/2008 Page 2 of 3

Respectfully submitted,

RONALD J. TENPAS  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

Date: 5/28/2008

/s/Kenneth G. Long (DC Bar No. 414791)  
KENNETH G. LONG  
JEFFREY M. PRIETO  
Trial Attorneys  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-2840  
(202) 616-6584 (fax)

JAMES LETTEN  
U.S. Attorney  
NEID FRANCIS  
Assistant U.S. Attorney  
Eastern District of Louisiana

d7c752aa84396abf6622aca600c41744a7cad6ab1601c5ab9a765b377f55e]]

**CERTIFICATE OF SERVICE**

I hereby certify service of the Notice of Lodging of Consent Decree, unless otherwise noted, on this 28th day of May, 2008, upon:

PARTY	ATTORNEY IN CHARGE
Attorneys for City of New Orleans	Evelyn F. Pugh CITY OF NEW ORLEANS 1300 Perdido Street Room 5E03 New Orleans, LA 70112 (Via Facsimile, 504-658-9868)
Attorneys for Delta By-Products, Inc. and Edward Levy Metals, Inc.	Lawrence G. Pugh III PUGH, ACCARDO, HAAS & RADECKER, L.L.C. Energy Centre 1100 Poydras Street, Suite 2000 New Orleans, LA 70163-2000 (Via Facsimile, 504-799-4520)
Attorney for Board of Commissioners of the Port of New Orleans	Jeffrey Mark Lynch BOARD OF COMMISSIONERS OF THE PORT OF NEW ORLEANS Port of New Orleans 1350 Port of New Orleans Place P.O. Box 60046 New Orleans, Louisiana 70130 (Via Facsimile, 504-528-3209)

s/ Kenneth G. Long (DC Bar No. 414791)  
Kenneth G. Long  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division

Date: May 28, 2008

UNITED STATES OF AMERICA,

Plaintiff,

**v.**

**CITY OF NEW ORLEANS; CFI INDUSTRIES, INC.,  
formerly doing business as Letellier Phillips Paper  
Company; DELTA BY-PRODUCTS, INC.;  
EDWARD LEVY METALS, INC.,**

**Defendants.**

Civil Action No. 02-3618  
Section "E"  
Magistrate 3

## CONSENT DECREE



**TABLE OF CONTENTS**

I.	<u>BACKGROUND</u> .....	3
II.	<u>JURISDICTION</u> .....	5
III.	<u>PARTIES BOUND</u> .....	5
IV.	<u>DEFINITIONS</u> .....	5
V.	<u>PERFORMANCE OF THE WORK BY SETTLING DEFENDANT</u> .....	8
VI.	<u>ACCESS AND INSTITUTIONAL CONTROLS</u> .....	10
VII.	<u>REPORTING REQUIREMENTS</u> .....	16
VIII.	<u>FORCE MAJEURE</u> .....	16
IX.	<u>DISPUTE RESOLUTION</u> .....	19
X.	<u>FAILURE TO COMPLY WITH CONSENT DECREE</u> .....	22
XI.	<u>COVENANT NOT TO SUE BY PLAINTIFF</u> .....	25
XII.	<u>RESERVATION OF RIGHTS BY UNITED STATES</u> .....	25
XIII.	<u>COVENANT NOT TO SUE BY SETTLING DEFENDANT</u> .....	27
XIV.	<u>EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION</u> .....	28
XV.	<u>ACCESS TO INFORMATION</u> .....	29
XVI.	<u>RETENTION OF RECORDS</u> .....	30
XVII.	<u>NOTICES AND SUBMISSIONS</u> .....	31
XVIII.	<u>RETENTION OF JURISDICTION</u> .....	32
XIX.	<u>INTEGRATION</u> .....	33
XX.	<u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u> .....	33
XXI.	<u>SIGNATORIES/SERVICE</u> .....	33
XXII.	<u>APPENDIX</u> .....	34
XXIII.	<u>FINAL JUDGMENT</u> .....	34

## **I. BACKGROUND**

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 104 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604 and 9607, as amended ("CERCLA"), against, inter alia, the City of New Orleans ("City" or Settling Defendant"), seeking civil penalties for its failure to comply with an access order and reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Agriculture Street Landfill Superfund Site in New Orleans, LA ("the Site").

B. In entering into this Consent Decree, the City does not admit any liability to Plaintiff or any other party arising out of the transactions or occurrences alleged in the complaint.

C. On August 23, 1994, the Site was proposed for inclusion on the National Priorities List (NPL) as part of NPL update No. 17, and on December 16, 1994, EPA placed the site on the NPL.

D. EPA performed removal actions at the Site under a series of operable units. Operable Unit 1 ("OU1") addressed Undeveloped Property, Operable Unit 2 ("OU2") addressed Residential Properties, and Operable Unit 3 ("OU3") addressed the Shirley Jefferson Community Center. No actions by EPA were needed on Operable Unit 4 ("OU4") (Moton Elementary School) or Operable Unit 5 ("OU5") (Ground Water). The removal action on OUI consisted of clearing the 48-acre area, grading it to direct storm water runoff away from the residential area, laying a permeable geotextile mat followed with orange fencing, covering the

## **I. BACKGROUND**

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 104 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604 and 9607, as amended ("CERCLA"), against, inter alia, the City of New Orleans ("City" or Settling Defendant"), seeking civil penalties for its failure to comply with an access order and reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Agriculture Street Landfill Superfund Site in New Orleans, LA ("the Site").

B. In entering into this Consent Decree, the City does not admit any liability to Plaintiff or any other party arising out of the transactions or occurrences alleged in the complaint.

C. On August 23, 1994, the Site was proposed for inclusion on the National Priorities List (NPL) as part of NPL update No. 17, and on December 16, 1994, EPA placed the site on the NPL.

D. EPA performed removal actions at the Site under a series of operable units. Operable Unit 1 ("OU1") addressed Undeveloped Property, Operable Unit 2 ("OU2") addressed Residential Properties, and Operable Unit 3 ("OU3") addressed the Shirley Jefferson Community Center. No actions by EPA were needed on Operable Unit 4 ("OU4") (Moton Elementary School) or Operable Unit 5 ("OU5") (Ground Water). The removal action on OU1 consisted of clearing the 48-acre area, grading it to direct storm water runoff away from the residential area, laying a permeable geotextile mat followed with orange fencing, covering the



mat/marker with twelve inches of clean fill, and re-establishing a vegetative layer on the clean fill. The removal actions on OU2 and OU3 consisted generally of preparing the property, removing driveways and sidewalks as needed, excavating 24 inches of soil, placing a permeable geotextile mat/marker on the subgrade, backfilling the excavated area with clean fill, covering the clean fill with grass sod, landscaping and yard restoration, driveway and sidewalk replacement, and final detailing. Because contaminants have been left in place beneath the geotextile mat, proper operation and maintenance practices and institutional controls are required to maintain the integrity of the cap.

F. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by the Settling Defendant if conducted in accordance with the requirements of this Consent Decree and its appendices.

G. The United States has reviewed the Financial Information submitted by Settling Defendant, as well as publicly available information, to determine whether the Settling Defendant is financially able to pay Past Response Costs and civil penalties incurred in connection with the Site. Based upon this information and in light of the extraordinary financial difficulties of the Settling Defendant due to Hurricane Katrina, the United States has determined that Settling Defendant is unable to make a cash payment toward Past Response Costs or civil penalties incurred in connection with the Site.

H. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement on the terms herein will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED,  
ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States, and upon Settling Defendants and its successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

## **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

b. "Consent Decree" shall mean this Consent Decree.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. "Operable Unit 1" or "OU1" shall mean the approximately 48 acres of undeveloped property that was cleared, graded, overlaid with a geotextile mat and 12 inches of clean fill, replanted, and fenced by EPA during the first removal action in March 1994 and that was subsequently repaired in March 1996.

i. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

j. "Parties" shall mean the United States and Settling Defendants.



k. "Past Response Costs" shall mean all costs, including, but not limited to direct and indirect costs that EPA or DOJ on behalf of EPA has paid at or in connection with response actions for the Site through the date of lodging of this Consent Decree, plus accrued Interest on all such costs.

l. "Plaintiff" shall mean the United States.

m. "Remedy" shall mean the placement of a permeable geotextile mat followed with orange fencing (to serve as a highly visible marker), covering the mat/marker with twelve inches of clean fill, and re-establishing a vegetative layer on the clean fill on OU1. For OU2 and OU3, the excavation of 24 inches of soil, placement of a permeable geotextile mat/marker on the subgrade, backfilling the excavated area with clean fill, covering the clean fill with grass sod, landscaping and yard restoration, driveway and sidewalk replacement, and final detailing.

n. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

o. "Settling Defendant" shall mean the City of New Orleans.

p. "Site" shall mean the Agriculture Street Landfill Site located in Orleans Parish, City of New Orleans. The approximately 95-acre Site is bordered by Higgins Boulevard on the north, the above-grade railroad rights-of-way on the south and west, and the cul-de-sac at the southern end of Clouet Street, near the railroad tracks, to Higgins Boulevard between Press and Montegut streets on the east.

q. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

r. "Work" shall mean the compliance requirements set forth in Section V of the

Decree.

4. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect the remedy on the Site and, thereby, the public health or welfare or the environment at the Site, by the implementation of the Work and institutional controls by Settling Defendant, and to resolve the claims of Plaintiff against Settling Defendant for Past Response Costs as provided in this Consent Decree.

**V. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT**

5. The geotextile mat is covered by 12 inches of clean soil and a vegetative cover on the undeveloped properties (OUI), 18 inches of clean soil and a vegetative cover in the right of ways, and 24 inches of clean soil and a vegetative cover on residential properties and the community center. The vegetative cover is to prevent the erosion of the soil cap. The soil cap and geotextile mat covering the Site could be breached or degraded by excavation within the Site or by the failure to maintain the vegetative cover over the soil cap. Therefore, the City shall implement the following Work to maintain the cap and provide for appropriate restrictions on use and excavation of the property:

a. The Settling Defendant shall maintain and repair the security fence around the OUI undeveloped property which is bordered by Higgins Boulevard to the north, Almonaster Boulevard to the west, by Industry Street to the north and above-grade railroad rights-of-way on the south, and by St. Ferdinand behind the homes located on Press Street and by the cul-de-sac at the southern end of Clouet Street, for a period of 10 years from the date of entry of the Decree, or until the Site is delisted from the NPL, or EPA otherwise approves the removal of the fence, whichever is sooner.

b. The Settling Defendant will mow vegetation at least twice per year, and otherwise maintain, its right of ways within OUI in order to maintain a stable vegetative cover. Because lack of mowing/maintenance by private owners of land within the Site is likely to damage the subsurface geotextile mat, the City will use its available authorities to (a) require that landowners mow and otherwise maintain the grass vegetation on their properties, or (b) undertake the necessary maintenance directly.

c. Within 60 days from the date of entry of this Decree, the City will provide to all utilities operating within the Site area the Technical Abstract for Utilities Operating Within the Agriculture Street Landfill Superfund Site, attached as Appendix A.

d. Within 60 days from the date of entry of this Decree, the City will join and maintain its membership in the LAOne Call program and will designate an office within the City as the point of contact to provide the Technical Abstract for Utilities Operating Within the Agriculture Street Landfill Superfund Site, attached as Appendix A, to be followed when excavating beneath the geotextile mat at the Site.<sup>1/</sup>

e. Within 60 days from the date of entry of this Decree, Settling Defendant will direct that all of its agencies and departments, including the Sewerage and Water Board of New Orleans ("SWB"), incorporate the Technical Abstract for Utilities Operating Within the Agriculture Street Landfill Superfund Site, attached as Exhibit A, as standard operating procedures when working within the Site.

---

<sup>1/</sup>Ms. Thelma Latham (the General Manager of the Louisiana and Texas divisions of One Call Concepts, Inc. – 222-275-3700, ext 409). Louisiana's One Call website: [http://www.laonecall.com/for\\_best\\_results\\_frame\\_page.htm](http://www.laonecall.com/for_best_results_frame_page.htm) LAOne Call's membership list includes Bell South, Entergy, and Cox Communications. The Sewerage and Water Board of New Orleans and the City of New Orleans are not members.



f. Annual Notice to Property Owners Within the Site. The Settling Defendant will ensure that, within 60 days of entry of this Decree and on an annual basis thereafter, the SWB includes in bills to customers owning or renting property at the Site the protocol for Post-Removal Maintenance for Property Owners, attached as Appendix B to this Decree.

Alternatively, within 60 days of entry of this Decree and on an annual basis thereafter, the Settling Defendant will mail the Protocol to property owners and renters at the Site.

g. Designation of Disposal Facility: Within 45 days from the date of entry of this Decree, the Settling Defendant will designate an appropriate landfill facility for the disposal of soils excavated and removed from beneath the geotextile mat. This disposal facility shall be identified in the Technical Abstract for Utilities Operating Within the Agriculture Street Landfill Superfund Site and in the Protocol for Post-Removal Maintenance for Property Owners.

6. Within 30 days of entry of this Decree, the Settling Defendant will designate an official of the City as the Project Coordinator who will be responsible for ensuring the City's compliance with the requirements of the Decree. The Settling Defendant's performance of the Work obligations under Section V and obligations under Section VI of this Consent Decree shall be under the direction and supervision of the Project Coordinator, and that person shall be the lead point of contact for EPA with the City. If at any time thereafter, Settling Defendant proposes to change the Project Coordinator, Settling Defendant shall give notice to EPA before the new designee performs, directs, or supervises any Work under this Consent Decree.

## **VI. ACCESS AND INSTITUTIONAL CONTROLS**

7. If the Site, or any other property where access and/or use restrictions are needed to implement this Consent Decree, is owned or controlled by the Settling Defendant, then the

Settling Defendant shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States and its representatives, including EPA and its contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

(1) Monitoring, investigation, removal, remedial or other activities at the Site, including 5-year reviews;

(2) Verifying any data or information submitted to the United States;

(3) Conducting investigations relating to contamination at or near the Site;

(4) Obtaining samples;

(5) Assessing the need for, planning, or implementing additional response actions at or near the Site;

(6) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section XV (Access to Information);

(7) Assessing Settling Defendant's compliance with this Consent Decree; and

(8) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. commencing on the date of lodging of this Consent Decree, refrain from



using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedy completed for the Site. Such restrictions include, but are not limited to disturbances to the surface or subsurface of the Site, including filling, drilling, excavation or construction on the Site, that is unrelated to the remedy measures implemented at the Site, unless such excavation is consistent with the Technical Abstract for Utilities attached hereto as Appendix A.

and

c. execute and record in the Recorder's Office [or Registry of Deeds or other appropriate land records office] of Orleans Parish, State of Louisiana, an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 7(a) of this Consent Decree, and (ii) grants the right to enforce the land use restrictions listed in Paragraph 7(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedy completed for the Site. Settling Defendant shall grant the access rights and the rights to enforce the land use restrictions to the United States, on behalf of EPA, and its representatives, and (ii) the State and its representatives.

8. Settling Defendant shall, within 45 days of entry of this Consent Decree, submit to EPA for review and approval with respect to such property:

a. a draft easement, in substantially the form attached hereto as Appendix C, that is enforceable under the laws of the State of Louisiana, and

b. a current title insurance commitment or some other evidence of

title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendant is unable to obtain release or subordination of such prior liens or encumbrances). Within 15 days of EPA's approval and acceptance of the easement and the title evidence, Settling Defendant shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Recorder's Office [or Registry of Deeds or other appropriate office] of Orleans Parish. Within 30 days of recording the easement, Settling Defendant shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

9. Conveyance Notice. If the Site, or any other property where access and or land use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than the Settling Defendant, then Settling Defendant shall, within 60 days of the entry of this Decree, make best efforts to execute and record in the Recorder's Office [or Registry of Deeds or other appropriate land records office] of Orleans Parish, State of Louisiana, an EPA approved conveyance notice, running with the land, to alert future transferees of the response action and waste in place, and to explain maintenance and excavation guidelines for the property. The conveyance notice will be substantially in the form of the Conveyance Notice set forth in

Appendix D.

10. Within 30 days of the recording of the Conveyance Notice, Settling Defendant shall provide EPA with a certified copy of the original recorded Conveyance Notice showing the clerk's recording stamps. If any access easement or conveyance notice required by Paragraph 9 of this Consent Decree is not recorded within 60 days of the date of entry of this Consent Decree, Settling Defendant shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendant have taken to attempt to comply with Paragraphs 8 and 9 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendant in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. Settling Defendant shall reimburse the United States for all costs incurred, direct or indirect, by the United States in obtaining such access, land/water use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation, in accordance with the payment procedures in Paragraph 28.

11. EPA has determined that additional restrictions on excavation within the Site in the form of a zoning ordinance and/or excavation permit requirement are needed to protect and ensure the integrity and protectiveness thereof, or ensure non-interference therewith, the remedy at the Site.

a. Therefore, within 60 days of the entry of this Decree, Settling Defendant shall submit to EPA for approval a proposed zoning ordinance and/or permit requirement that will



meet in substance the following objectives: (a) require that owners or lessees of land within the Site (b) who seek to excavate soil to a depth of greater than 18 inches (c) provide notice to the appropriate City department of their intent to excavate and to comply with the Protocol on Post-Removal Maintenance for Property Owners for the handling of contaminated soils and repair of the soil/geotextile mat (d) no less than 3 days prior to the proposed excavation, and (e) make available to those persons in a timely and readily accessible fashion the Protocol on Post-Removal Maintenance for Property Owners which is attached as Appendix B.

b. The Settling Defendant will make best efforts to submit the proposed ordinance/requirement to the appropriate City authority for approval and adoption within 60 days of EPA's approval of the proposal. If the proposed ordinance/requirement is rejected by the appropriate City authority, then the Settling Defendant will submit a revised proposal to EPA within 45 days for approval and, upon approval, resubmit to the appropriate City authority for approval and adoption. This process shall be followed by the Settling Defendant until such time as an EPA approved ordinance/requirement is adopted by the City. The schedule for review, approval, and resubmission to EPA and/or the City authority may be modified for cause upon written request to, and agreement by, EPA. The Settling Defendant will notify EPA within 30 days after the proposed ordinance/requirement becomes effective in accordance with Section XVII (Notice and Submissions).

12. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendant shall cooperate with EPA's efforts to secure such

governmental controls.

13. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

#### **VII. REPORTING REQUIREMENTS**

14. In addition to any other requirement of this Consent Decree, Settling Defendant shall submit to EPA on an annual basis beginning one year from the effective date of the Decree a written progress report that describes the actions which have been taken to achieve compliance and the status of compliance with Section V of this Consent Decree during the previous year.

15. All reports and other documents submitted by Settling Defendant to EPA which purport to document Settling Defendant's compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendant.

#### **VIII. FORCE MAJEURE**

16. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendant, of any entity controlled by Settling Defendant, or of Settling Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the obligation. The requirement that the Settling Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the

greatest extent possible. "Force Majeure" does not include financial inability to complete the Work.

17. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendant shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 6, within 24 hours of when Settling Defendant first knew that the event might cause a delay. Within five (5) days thereafter, Settling Defendant shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendant's rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendant shall be deemed to know of any circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant's contractors, knew or should have known.



18. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendant in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

19. If Settling Defendant elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraph 17, above. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to

EPA and the Court.

#### **IX. DISPUTE RESOLUTION**

20. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendant that have not been disputed in accordance with this Section.

21. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

22. **Statements of Position.**

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 14 days after the conclusion of the informal negotiation period, Settling Defendant invoke the formal dispute resolution procedures of this Section by serving on the United States and the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendant. The Statement of Position shall specify the Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 23 or Paragraph 24.



b. Within 30 days after receipt of Settling Defendant's Statement of Position, EPA will serve on Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 23 or 24. Within 7 days after receipt of EPA's Statement of Position, Settling Defendant may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendant as to whether dispute resolution should proceed under Paragraph 23 or 24, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 23 and 24, respectively.

23. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendant regarding the validity of the Action Memorandum's provisions.

a. An administrative record of the dispute shall be maintained by EPA and

shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Superfund Division, EPA Region 6, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 23.a. This decision shall be binding upon Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 23c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 23.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendant with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendant's motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 23.a.

24. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendant's Statement of Position submitted



pursuant to Paragraph 22, the Director of the Superfund Division, EPA Region 6, will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on the Settling Defendant unless, within 10 days of receipt of the decision, the Settling Defendant files with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant's motion.

b. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

25. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendant under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 29. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Failure to Comply with Consent Decree).

#### **X. FAILURE TO COMPLY WITH CONSENT DECREE**

26. Stipulated Penalty. Settling Defendant shall be liable for stipulated penalties in the amounts set forth below to the United States for failure to comply with the requirements of this Consent Decree, unless excused under Section VIII (Force Majeure). "Compliance" by

Settling Defendant shall include completion of the activities under Sections V or VI of this Consent Decree in accordance with all applicable requirements of law, this Consent Decree, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

27. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph 27.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	1st through 14th day
\$200	15th through 30th day
\$300	31st day and beyond

b. Compliance Milestones.

The compliance milestones include the deadlines for compliance set forth in Paragraph 5 (c)-(g) and Paragraphs 7-9 and 12.

c. Settling Defendant's failure to comply with the requirements of Paragraphs 5(a) -(b) and 6 shall result in a stipulated penalty of \$100 per violation per day of noncompliance after written notice by EPA and a grace period of 30 days to correct the noncompliance.

28. a. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA

Region and Site Spill ID Number 06D7, DOJ Case Number 90-11-3-1638/2, and the civil action number. Settling Defendant shall send the check (and any accompanying letter) to:

U.S. Environmental Protection Agency - Region VI  
Attention: Superfund Accounting  
P.O. Box 360582M  
Pittsburgh, PA 15251

b. At the time of each payment, Settling Defendant shall also send notice that payment has been made to EPA and DOJ in accordance with Section XIII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number 06D7, DOJ Case Number 90-11-3-1638/2, and the civil action number.

c. With the exception of penalties provided in Paragraph 15(c), penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

29. Penalties shall continue to accrue as provided in Paragraph 28 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA and the State within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be



owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendant to the extent that they prevail.

30. If the United States brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

31. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

32. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Section V or from performance of any other requirements of this Consent Decree.

#### **XI. COVENANT NOT TO SUE BY PLAINTIFF**

33. Covenant Not to Sue Settling Defendant by United States. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants

not to sue or to take administrative action against Settling Defendant pursuant to Sections 104(e), 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9604(e), 9606, and 9607(a), to recover Past Response Costs, civil penalties related to the Settling Defendant's prior failure to provide access, or the Work. This covenant not to sue shall take effect upon Settling Defendant's recording of Conveyance Notices upon all properties at the Site as required by Section V and payment of any amount due under Section VI (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

## **XII. RESERVATIONS OF RIGHTS BY UNITED STATES**

34. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiff in Paragraph 33. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

- a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for



the costs of any natural resource damage assessments.

**XIII. COVENANT NOT TO SUE BY SETTLING DEFENDANT**

35. Settling Defendant covenants not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs, access, the Work, or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States, including any department, agency or instrumentality of the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs, access, or the Work.

36. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

37. Settling Defendant agrees not to assert any claims for Past Response Costs, access or the Work, and to waive and dismiss all claims or causes of action that it may have relating to Past Response Costs, access, or the Work, including for contribution, against any other person. This waiver shall not apply with respect to any defenses, claims or causes of action that Settling

Defendant may have against any person if such person asserts a claim or cause of action relating to Past Response Costs, access, or the Work against such Settling Defendant and that claim is not otherwise barred by the effect of this settlement.

**XIV. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

38. Except as provided in Paragraph 33, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 37, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

39. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs and the Work.

40. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the statute of limitations, principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not

to Sue by Plaintiff set forth in Section XI.

#### **XV. ACCESS TO INFORMATION**

41. Settling Defendant shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within its possession or control or that of its contractors or agents relating to activities at the Site, including, but not limited to, correspondence, or other documents or information related to the Site.

42. Confidential Business Information and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R.

2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Defendant that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such records without further notice to Settling Defendant.

b. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege in lieu of providing records, it shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of



privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor.

However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

43. No claim of confidentiality shall be made with respect to any data, including but not limited to any other documents or information evidencing conditions at or around the Site.

#### **XVI. RETENTION OF RECORDS**

44. Until 10 years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

45. After the conclusion of the 10-year document retention period in the preceding paragraph, Settling Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendant shall deliver any such records to EPA. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the

author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

46. Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e)

#### **XVII. NOTICES AND SUBMISSIONS**

47. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

As to the United States:

DOJ:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-3-1638/2)  
P.O. Box 7611  
Washington, D.C. 20044-7611

EPA:

Ursula Lennox  
Remedial Project Manager  
U.S. EPA (6SF-LP)  
U. S. Environmental Protection Agency Region VI  
1445 Ross Avenue  
Dallas, TX 75202-2733

Joseph E. Compton, III  
Assistant Regional Counsel  
Office of Regional Counsel  
U. S. Environmental Protection Agency Region VI  
1445 Ross Avenue  
Dallas, TX 75202-2733

Settling Defendant:

Penya M. Moses-Fields  
City Attorney  
City of New Orleans Law Department  
1300 Perdido Street, 5<sup>th</sup> Floor East  
New Orleans, LA 70112

Wynecta Fisher  
Director, Mayor's Office of Environmental Affairs  
1350 Poydras Street, Suite 1000  
New Orleans, LA 70112

**XVIII. RETENTION OF JURISDICTION**

48. This Court shall retain jurisdiction over this matter for the purpose of



interpreting and enforcing the terms of this Consent Decree.

#### **XIX. INTEGRATION**

49. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

#### **XX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

50. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

51. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### **XXI. SIGNATORIES/SERVICE**

52. Each undersigned representative of Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

53. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by

this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

54. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

#### **XXII. APPENDIX**

55. The following appendices are attached to and incorporated into this Consent Decree:

“Attachment A” is the Technical Abstract for Utilities Operating Within the Agriculture Street Landfill Superfund Site;

“Attachment B” is the protocol for Post-Removal Maintenance for Property Owners;

“Attachment C” is the draft Environmental Protection Easement and Declaration of Restrictive Covenants;

“Attachment D” is the Conveyance Notice.

#### **XXIII. FINAL JUDGMENT**

56. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling

Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2008.

MARCEL LIVAUDAIS, JR.  
Senior United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. City of New Orleans, et al*, Civil Action No. 02-3618, relating to the Agriculture Street Landfill Superfund Site.

**FOR THE UNITED STATES OF AMERICA**

UNITED STATES DEPARTMENT OF JUSTICE

Date: 4/3/08



RONALD J. TENPAS  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

Date: 3/12/2008




KENNETH G. LONG  
JEFFREY M. PRIETO  
Trial Attorneys  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-2840  
(202) 616-6584 (fax)

JAMES LETTEN  
U.S. Attorney  
ENEID FRANCIS  
Assistant U.S. Attorney  
Eastern District of Louisiana

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Date: 5/7/08

  
SAMUEL COLEMAN, P.E.  
Director  
Superfund Division

Date: 5/19/08

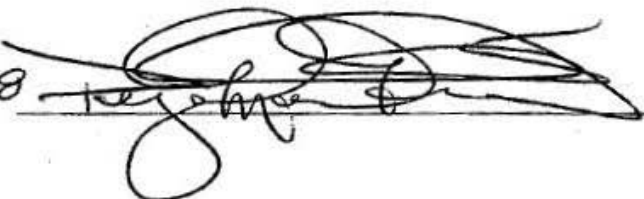
  
JOSEPH E. COMPTON, III  
Assistant Regional Counsel  
Office of Regional Counsel  
U. S. Environmental Protection Agency Region VI  
1445 Ross Avenue  
Dallas, TX 75202-2733



THE UNDERSIGNED PARTY enter into this Consent Decree in the matter of *United States v. City of New Orleans, et al*; Civil Action No. 02-3618, relating to the Agriculture Street Landfill Superfund Site.

FOR DEFENDANT CITY OF NEW ORLEANS

Date:

January 13, 2008 

PENYA MOSES-FIELDS  
City Attorney  
City of New Orleans Law Department  
1300 Perdido Street  
5<sup>th</sup> Floor East  
New Orleans, LA 70112



## APPENDIX A

### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 6 DALLAS, TEXAS

### AGRICULTURE STREET LANDFILL SUPERFUND SITE NEW ORLEANS, LOUISIANA

### TECHNICAL ABSTRACT UTILITIES

Updated September 2006

The remedy for subsurface contamination at the Agriculture Street Landfill Superfund Site includes a subsurface geotextile mat over contaminated material left in place. The geotextile mat is covered by 18 inches of clean soil and a vegetative cover in the right of ways and 24 inches of clean soil and a vegetative cover on the residential properties. The vegetative cover is to prevent the erosion of the soil cap. This Technical Abstract provides the protocol that utilities identified in the table below should follow to maintain the integrity of the permeable soil and geotextile mat implemented by the U.S. Environmental Protection Agency on the Agriculture Street Landfill Superfund Site. With the exception of nine residential properties, an EPA response action was implemented on the Site. Based on the best available information to date, the following utilities provide service in the area.

SERVICE	PROVIDER
Telephone	Bell South
Water	Sewage & Water Board
Sewage	Sewage & Water Board
Cable TV	Cox Communications
Electric	Entergy
Gas	Entergy

All properties will not have all of the above mentioned utilities present. However, the concerns and considerations for each utility will be the same for all properties.

### EXCAVATION BELOW TWO FOOT EXCAVATION/BACKFILL LIMITS

In the event that a utility company finds it necessary to excavate below the limits of the geotextile mat, the following procedures are to be followed:

- 1) The utility company shall notify the city of New Orleans that excavation below and penetration of the geotextile mat is necessary.
- 2) Soils excavated within the top two feet of the excavation (above the geotextile) may be set aside and used as backfill in the same area.
- 3) The geotextile is to be cut to provide access below the mat.
- 4) Soil excavated from below the mat is considered to be landfill material. Each utility company is to determine, after consulting with a Certified Industrial Hygienist, the proper personal protective equipment required to accomplish the work.
- 5) After completion of the work, the excavated soil (that from below the mat) may be placed back into the excavation as backfill (to an elevation not to exceed the elevation of the adjacent geotextile mat) or may be tested by the utility company and disposed of properly at a facility designated by the City of New Orleans.
- 6) After completion of the backfill below the remedy area, the geotextile and marker is to be restored. The geotextile is to be patched by cutting a piece of new fabric so that there is an overlap of 3 feet on all sides. The fabric used as the patch shall be of the same quality and properties as the original fabric.
- 7) The soils excavated from the top two feet shall be used as backfill above the geotextile mat.

For additional information, you may contact the City ..... at .....

## **APPENDIX B**

### **NOTICE**

#### **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 6 DALLAS, TEXAS**

#### **AGRICULTURE STREET LANDFILL SUPERFUND SITE NEW ORLEANS, LOUISIANA**

#### **POST-REMOVAL MAINTENANCE FOR PROPERTY OWNERS**

The remedy for subsurface contamination at the Agriculture Street Landfill Superfund Site includes a subsurface geotextile mat over contaminated material left in place. The geotextile mat is covered by 18 inches of clean soil and a vegetative cover in the right of ways and 24 inches of clean soil and a vegetative cover on residential properties. The vegetative cover is to prevent the erosion of the soil cap. Post-closure care of the clean soil cap and vegetative cover consists of routine activities to maintain the integrity of the soil cap and vegetation on your property. Surface maintenance includes simple measures such as filling in holes above the geotextile mat with clean soil and continued cultivation of the grass, shrubbery, trees, and other landscape features to assure a healthy vegetative cover over the clean fill.

If excavation below the geotextile mat is required, the procedures for excavation and restoration outlined below should be followed. In general:

- 1) Clean soils excavated within the top two feet of the excavation (above the geotextile) may be set aside and used as backfill in the same area.
- 2) The geotextile is to be cut to provide access below the mat.
- 3) Soil excavated from below the mat is considered to be contaminated landfill material and should be placed on a plastic sheet (away from the clean soil), to avoid contact with the surface soil. Also proper personal protective equipment (i.e. coveralls, gloves, etc.) may be required to accomplish the work.
- 4) After completing the work, the excavated soil (from below the mat) may be placed back into the excavation below the mat as backfill.
- 5) After completion of the backfill below the matted area, the geotextile and marker are to be restored, and the excavation equipment cleaned.

6) The soils excavated from the top two feet (or clean fill from another source) can be used as backfill above the geotextile mat. The area should be re-vegetated and maintained, to off-set the erosion of clean backfill.

For additional information, you may contact the City ..... at .....



## APPENDIX C

### ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

1. This Environmental Protection Easement and Declaration of Restrictive Covenants is made this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between \_\_\_\_\_, ("Grantor"), having an address of \_\_\_\_\_, and, \_\_\_\_\_ ("Grantee"), having an address of \_\_\_\_\_.

#### WITNESSETH:

2. WHEREAS, Grantor is the owner of a parcel of land located in the Parish of \_\_\_\_\_, State of \_\_\_\_\_, more particularly described on **Exhibit A** attached hereto and made a part hereof (the "Property"); and

3. WHEREAS, the Property is part of the Agriculture Landfill Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on December 16, 1994; and

4. WHEREAS, EPA performed removal actions at the Site under a series of operable units. Operable Unit 1 ("OU1") addressed Undeveloped Property, Operable Unit 2 ("OU2") addressed Residential Properties, and Operable Unit 3 ("OU3") addressed the Shirley Jefferson Community Center. No actions by EPA were needed on Operable Unit 4 ("OU4") (Moton Elementary School) or Operable Unit 5 ("OU5") (Ground Water). The removal action on OU1 consisted of clearing the 48-acre area, grading it to direct storm water runoff away from the residential area, laying a permeable geotextile mat followed with orange fencing, covering the mat/marker with twelve inches of clean fill, and re-establishing a vegetative layer on the clean fill. The removal actions on OU2 and OU3 consisted generally of preparing the property, removing driveways and sidewalks as needed, excavating 24 inches of soil, placing a permeable geotextile mat/marker on the subgrade, backfilling the excavated area with clean fill, covering

the clean fill with grass sod, landscaping and yard restoration, driveway and sidewalk replacement, and final detailing. Because contaminants have been left in place beneath the geotextile mat, proper operation and maintenance practices and institutional controls are required to maintain the integrity of the cap.

5. WHEREAS, the parties hereto have agreed 1) to grant a permanent right of access over the Property to the Grantee for purposes of implementing, facilitating and monitoring the remedial action; and 2) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment; and

6. WHEREAS, Grantor wishes to cooperate fully with the Grantee in the implementation of all response actions at the Site;

NOW, THEREFORE:

7. Grant: Grantor, on behalf of itself, its successors and assigns, in consideration of the terms of the Consent Decree in the case of United States v. City of New Orleans, et al., does hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and does give, grant and convey to the Grantee, and its assigns, with general warranties of title, 1) the perpetual right to enforce said use restrictions, and 2) an environmental protection easement of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.

8. Purpose: It is the purpose of this instrument to convey to the Grantee real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.

9. Restrictions on use: The following covenants, conditions, and restrictions apply to the use of the Property, run with the land and are binding on the Grantor:

10. Modification of restrictions: The above restrictions may be modified, or terminated in whole or in part, in writing, by the Grantee. If requested by the Grantor, such writing will be executed by Grantee in recordable form.

11. Environmental Protection Easement: Grantor hereby grants to the Grantee an irrevocable, permanent and continuing right of access at all reasonable times to the Property for purposes of:

- (a) Monitoring, investigation, removal, remedial or other activities at the Site, including 5-year reviews;
- b) Verifying any data or information submitted to EPA;



- c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
- d) Monitoring response actions on the Site and conducting investigations relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples;
- e) Conducting periodic reviews of the response action, including but not limited to, reviews required by applicable statutes and/or regulations; and
- f) Implementing additional or new response actions if the Grantee, in its sole discretion, determines i) that such actions are necessary to protect the environment because either the original remedial action has proven to be ineffective or because new technology has been developed which will accomplish the purposes of the remedial action in a significantly more efficient or cost effective manner; and, ii) that the additional or new response actions will not impose any significantly greater burden on the Property or unduly interfere with the then existing uses of the Property.

12. Reserved rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and easements granted herein.

13. Nothing in this document shall limit or otherwise affect EPA's rights of entry and access or EPA's authority to take response actions under CERCLA, the NCP, or other federal law.

14. No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

15. Notice requirement: Grantor agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a

notice which is in substantially the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS  
SUBJECT TO AN ENVIRONMENTAL PROTECTION  
EASEMENT AND DECLARATION OF RESTRICTIVE  
COVENANTS, DATED \_\_\_\_\_, 2008, RECORDED IN  
THE PUBLIC LAND RECORDS ON \_\_\_\_\_, 2008, IN  
BOOK \_\_\_\_\_, PAGE \_\_\_\_\_, IN FAVOR OF, AND  
ENFORCEABLE BY, THE UNITED STATES OF  
AMERICA.**

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor must provide Grantee with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

16. Administrative jurisdiction: The federal agency having administrative jurisdiction over the interests acquired by the United States by this instrument is the EPA.

17. Enforcement: The Grantee shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Enforcement of the terms of this instrument shall be at the discretion of the Grantee, and any forbearance, delay or omission to exercise its rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term, or of any of the rights of the Grantee under this instrument.

18. Damages: Grantee shall be entitled to recover damages for violations of the terms of this instrument, or for any injury to the remedial action, to the public or to the environment protected by this instrument.

19. Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.

20. Covenants: Grantor hereby covenants to and with the United States and its assigns, that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, that the Property is free and clear of encumbrances, except those noted on **Exhibit D** attached hereto, and that the Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

21. Notices: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:



To Grantor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Grantee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

22. General provisions:

a) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the state where the Property is located.

b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f) Joint Obligation: If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

g) Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs,

successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantee" and their personal representatives, heirs, successors, and assigns. The rights of the Grantee and Grantor under this instrument are freely assignable, subject to the notice provisions hereof.

h) Termination of Rights and Obligations: A party's rights and obligations under this instrument terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

I) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

j) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto the United States and its assigns forever.

IN WITNESS WHEREOF, Grantor has caused this Agreement to be signed in its name.

Executed this                      day of                      , 2008.

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss

On this \_\_\_ day of \_\_\_, 2008, before me, the undersigned, a Notary Public in and for the State of \_\_\_, duly commissioned and sworn, personally appeared \_\_\_\_\_, known to be the \_\_\_\_\_ of \_\_\_\_\_, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

Case 2:02-cv-03618-ML-DEK Document 256-2 Filed 05/28/2008 Page 49 of 50

Witness my hand and official seal hereto affixed the day and year written above.

\_\_\_\_\_  
Notary Public in and for the  
State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

This easement is accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

UNITED STATES OF AMERICA  
the persons and/or entities named at the beginning of this document, identified as "Grantor" and  
their personal representatives, heirs, successors, and assigns.

U.S. ENVIRONMENTAL PROTECTION  
AGENCY

By: \_\_\_\_\_  
\_\_\_\_\_

Attachments:	Exhibit A	-	legal description of the Property
	Exhibit B	-	identification of proposed uses and construction plans, for the Property
	Exhibit C	-	identification of existing uses of the Property
	Exhibit D	-	list of permitted title encumbrances



## APPENDIX D

### CONVEYANCE NOTICE FOR LAND RECORDS

**Description:** Track No. \_\_\_\_\_. Common Description:

WHEREAS, the Property is part of the Agriculture Street Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on December 16, 1994; and

WHEREAS, in an Action Memorandum dated September 2, 1997, the EPA Region 6 Regional Administrator selected a "removal action" for the Site, which was successfully implemented and completed on April 27, 2001. The remedy for subsurface contamination at the Site included grading the undeveloped property, excavation of 18-24 inches of contaminated soil within the residential properties and community center, and a subsurface geotextile mat constructed over contaminated material left in place. The mat is covered by 12 inches of clean soil and a vegetative cover on the undeveloped properties, 18 inches of clean soil and a vegetative cover in the right of ways, and 24 inches of clean soil and a vegetative cover on residential properties and the community center. The vegetative cover is to prevent the erosion of the soil cap. The Agency for Toxic Substances and Disease Registry concurs with the response action and finds it sufficient to protect public health and the environment.

WHEREAS, maintenance activities, including maintenance of the cap and vegetative cover, should be continued by the property owner in accordance with the attached protocol for Post-Removal Maintenance for Property Owners.

**WHEREAS, this property may be subject to specific City permit requirements or zoning restrictions pertaining to the excavation of soil.**



[This page intentionally Left Blank]

## **Attachment 8 City Ordinance**

[This page intentionally left blank.]

12 (b) Upon application for an Excavation Permit within the boundaries of the Agriculture Street  
13 Landfill site, the Department of Safety and Permits shall provide the applicant with a copy of the

14 Protocol on Post-Removal Maintenance for Property Owners. Owners or lessees of land within the  
15 Agriculture Street Landfill Site who seek to excavate soil to a depth of greater than 18 inches shall  
16 provide notice to the Department of Safety and Permits and shall first apply for an Excavation Permit  
17 certifying in such Excavation Permit application their intent to excavate and to comply with the U.S.  
18 Environmental Protection Agency's Protocol on Post-Removal Maintenance for Property Owners for  
19 the handling of contaminated soils and repair of the soil/geotextile mat. In not less than three (3) days  
20 after applying for an Excavation Permit, an Excavation Permit may be issued to the applicant. No fees  
21 shall be charged for residential properties in connection with obtaining an Excavation Permit.

22 \* \* \* \*

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS NOVEMBER 15, 2007

ARNIE FIELKOW  
PRESIDENT OF COUNCIL

DELIVERED TO THE MAYOR ON NOVEMBER 16, 2007

APPROVED:

DISAPPROVED: NOVEMBER 20, 2007

C. RAY NAGIN  
MAYOR

RETURNED BY THE MAYOR ON NOVEMBER 21, 2007 AT 12:40 P.M.

PEGGY LEWIS  
CLERK OF COUNCIL

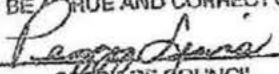
ROLL CALL VOTE:

YEAS: Carter, Darnell, Fielkow, Head, Hedge-Morrell, Midura, Willard-Lewis - 7

NAYS: 0

ABSENT: 0

G:\DoCS\Naami\amended ordinances\2007\22893.doc

THE FOREGOING IS CERTIFIED  
TO BE A TRUE AND CORRECT COPY  
  
CLERK OF COUNCIL



**BERNARD HODES GROUP.**

220 East 42nd Street, , NY 10017

(212) 999-9999

**PROOF OF INSERTION**

**IN 02647**

CLIENT: CH2MHILL

PUBLICATION: NEW ORLEANS TIMES PICAYAUNE

INSERTION DATE: JAN. 18, 2013

PAGE: A-4 Friday, January 18, 2013 Zone: Metro OUTPUT at 7:05 PM, THURSDAY